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THE
JUSTICES' NOTE-BOOK.

THE
JUSTICES' NOTE-BOOK.

CONTAINING

A SHORT ACCOUNT OF THE
JURISDICTION AND DUTIES OF JUSTICES,
AND
AN EPITOME OF CRIMINAL LAW.

BY

W. KNOX WIGRAM,

OF LINCOLN'S INN, BARRISTER-AT-LAW.
J.P., MIDDLESEX AND WESTMINSTER.

FOURTH EDITION.

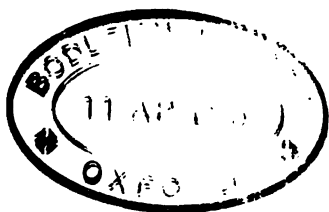
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And there it is, in writing."

Taming of the Shrew.

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PREFACE TO THE FOURTH EDITION.

THE revisal of the present issue has been continued up to the commencement of the present year. All recent changes produced by legislation, as well as the effect of all decided cases, bearing upon the matter in hand, have been considered, and noted where a note seemed necessary.

It may be too much to hope that the intermittent development of the Summary Jurisdiction Acts has at length ceased its action. There is no doubt still room for improvement in our procedure; but fitful and piecemeal legislation is a trial to those who have to epitomise, as well as to those who have to administer the law.

The index, which in a work of this description is a vital point, has not been overlooked, and no pains have again been spared to render it a thoroughly efficient chapter of reference which may be counted upon when time is of importance and patience out of the question.

As regards the book itself, I have the satisfaction to believe that it has answered the purpose with which it came into the world, and to know that it has met with a wide and kindly

reception among many who most assuredly stand in need of no elementary information.

In conclusion, I have only to hope that it may pass by degrees into the still broader circle of people who are neither Justices nor lawyers. That man's existence must be enviably serene who is content to care for none of these things. But even he might find it of advantage to make acquaintance with a few 'things' which, if 'not generally known,' are only so because they have hitherto been written in what for the world in general are sealed books. Upon this point, however, I have used all decent persuasion in my preface to the original edition, which still stands in its place.

W. KNOX WIGRAM.

THE CHESNUTS, TWICKENHAM.

January, 1885.

PREFACE TO THE FIRST EDITION.

IN every other profession and business under the sun, a man must serve an apprenticeship of some kind before he takes his turn at the honours and duties of a master-craftsman. The exception is that of the Justice of the Peace. His appointment upon the Commission implies no acquaintance with the Statutes at large. He need never have heard a case tried. His sole credentials are the instincts and education of an English gentleman. Yet, both in volume and variety, the amount of work which in these days may be instantly forced upon his attention is enormous. He is called upon to encounter it at once. He must do justice, both to himself and to others, with no further training in the matter than such as he can accomplish by the way.

Text-books are, of course, at his command. To these useful and indispensable manuals I should be ungrateful indeed if I did not confess my own private obligations.

But they are written from a professional stand-point, and are necessarily encumbered with detail. The novice, perhaps, may be excused for comparing them with the working-plans and cross-sections of a building, explained in surveyor's language. Nothing can be more useful, nothing more necessary, for an especial purpose. Only he would understand them better after looking at a rough sketch in perspective of the house itself.

That there is 'no royal road' to technical knowledge of any sort has been the bugbear of generations. Anyhow, when time is precious, don't let us waste it in driving through ponds and ploughed fields. I have tried my hand at a track, and these Notes are the result. I offer them with unfeigned diffidence, and a real dread of being suspected of undue presumption in a self-sought task.

I have endeavoured, at the outset, to give a short view of the position and duties of a Justice, and of the general nature of the work for which he is responsible. I have touched upon the ordinary course of Summary Jurisdiction, and Committal for Trial, with special reference, in the former case, to the changes which have been brought about by the legislation of 1879.

In the Second Part will be found an arrangement of particular subjects, treated in alphabetical order. Nobody who has so far suppressed all considerations of literary vanity as to condemn his work to the similitude of a

round-robin can be supposed to have been actuated by any but the most unselfish motives.

It is not pretended that these pages are issued without strong hope that they may be found serviceable not only to those who have their work to learn, but to those who are actually engaged in performing it. One man's experience is very like another's, and my own, at least, has taught me that, in half the cases in which we find ourselves at fault, it is through forgetfulness of some simple fact or rule which we ought to have remembered, and do remember directly we are reminded of it. Short and reliable information, available on the spot, is, next to ready money, the most desirable thing in life.

Finally, I should be sorry indeed to warn off those readers whose office is not the administration of the law. People might really know with advantage a little more than they do of the rules under which they are obliged to live. It is no question of recondite study, but of information which has a direct and daily interest for us all. Variety, at all events, is not wanting. Our work is a magnificent medley. A strange roll-call might be made from the tops of the following pages. '*Nihil humanum a nobis alienum.*' Among the thousand guises of crime, among the complicated provisions for a safe and civilised existence, one drops upon the small trouble of our country friend who has found a Colorado beetle.

The present volume has extended far beyond its originally

destined limit. The bounds have receded as the work advanced. I only wish that the 'lust of completion,' which grows upon one in every task which is worth completing at all, could have produced a worthier result. There is no need to say more. If the tool be useful, the workman will discover the use. If otherwise, there is nothing upon earth more futile than fiddling over a Preface.

W. K. W.

CONTENTS.

PART I.

PRELIMINARY NOTES.

PAGE

CHAPTER I.

Justices—Jurisdiction—Divisions—Petty and Special Sessions	1
--	---

CHAPTER II.

Summary Jurisdiction upon Information—Preliminary Proceedings	7
---	---

CHAPTER III.

Summary Jurisdiction upon Information—The Hearing and Punishment	13
--	----

CHAPTER IV.

Indictable Offences—Committal for Trial	24
---	----

CHAPTER V.

Summary Jurisdiction upon Information—Indictable Offences	34
---	----

CHAPTER VI.

Summary Jurisdiction upon Complaint	42
---	----

	PAGE
CHAPTER VII.	
Quarter Sessions and Appeal	47
CHAPTER VIII.	
Note on the Summary Jurisdiction Acts, 1879-1884.	51

PART II.

NOTES OF MATTERS AND OFFENCES, ALPHABETICALLY	
ARRANGED	59
APPENDIX	463

THE JUSTICES' NOTE-BOOK.

PRELIMINARY NOTES.

CHAPTER I.

JUSTICES—JURISDICTION—DIVISIONS—PETTY AND SPECIAL SESSIONS.

It is amusing to read the lamentations of a century since over the intolerable and multifarious amount of business which had been heaped upon Justices of the peace. We have had to put our shoulders to the wheel since then. We have seen an increase of labour and responsibility from which our grandfathers might well have shrunk. We see it advancing still, and with no gradual or doubtful growth. Session after session takes up the tale :—Something new for the County Authority. More work for that never-entirely-occupied couple, ‘Two Justices in petty sessions.’

The ordinary duties devolving under the Commission of the peace, of which we have undertaken to give some account, are partly of a judicial—partly of an administrative character. By judicial, we mean, for the present, those which concern the determination of matters of offence and complaint, or

which are incidental to proceedings between plaintiff and defendant, prosecutor and accused.

Under the head of Administrative duties, we may place all those civil functions which are entrusted to a Justice by virtue of his office, and which cannot be described as judicial in the ordinary acceptation of the term. In many cases it would be difficult, no doubt, to mark the border line, but in the main it is quite clear enough.

It is in the performance, as a rule, of his judicial duty, that a Justice exercises the wide authority which is known by the general name of Summary Jurisdiction. In the same category falls the judicial business at Quarter Sessions, where he takes his part, either in the decision of appeals from the Divisional Courts below, or in the trial of offenders charged with crimes of the graver or indictable class.

He exercises his judicial function, although in a special and restricted form, when he commits for trial persons charged before him with offences which it is beyond his province to punish in a summary manner. Here he carries his investigation up to a certain point only; when, if judicially satisfied that the trial ought to proceed, he transmits it either to Sessions or the Assizes, as the case may be. Should he, on the other hand, be of opinion that it ought not to proceed, he discharges the accused in the exercise of a like discretion.

Under the head of Administrative duties fall all those matters of civil polity which are entrusted to the hands of Justices in the interest of social order, and otherwise for the general good. The regulation of the retail traffic in strong drink—the granting of licences for various purposes—the general and authoritative superintendence exercised with respect to Highways, Lunatics, and the Poor—the attendance at Prison, and Asylum Committees, &c., may serve as instances in this direction. Of weightier character, but of the same nature, are those which he discharges as a member of his County Authority, composed of the entire body of its Justices periodically assembled.

Let us now turn to the conditions under which these duties are to be exercised. We shall at present speak exclusively of those which a Justice performs in what may be considered his subordinate capacity, *i.e.*, 'out of Quarter Sessions.'

He is placed then upon the Commission of the Peace for some particular County or Borough. Inside its boundaries he is, *primâ facie*, capable of exercising at any place, and for every purpose, the full powers of his office. But practically, at least as regards the County Justice, his actual field of usefulness is confined within narrower limits.

We must remember that while, for many purposes, one Justice may act alone, independently of any assistance from his fellows, in the great majority of cases, and as regards the discharge of business in general, the presence of a Bench composed of two or more Justices is indispensable. And for the sake, among other things, of securing this necessary co-operation, every county is parcelled out into districts known as Divisions. Each Division has its own staff of Justices, furnished usually from among those residing in the immediate neighbourhood, and its court-house or established place of meeting. In extensive Divisions, two or more places are frequently appointed for this purpose.

As a general rule, all matters of an administrative description which require to be performed within a Division, are performed by the Bench of that Division, to the exclusion of external interference. Thus each Division constitutes a separate and independent 'Licencing District,' within the Intoxicating Liquor Acts; and the whole control of the local liquor-traffic is vested in its Justices. In fact it may be generally stated that whenever any civil matter whatever, having reference to any locality, is referred to the cognisance or control of Justices, the Justices of the Division within which such matter arises, or to which it relates, are the only proper parties to entertain it.

Similarly, as regards judicial business, or matters of offence and complaint, each Bench considers itself and is considered

4 JUSTICES—JURISDICTION—DIVISIONS—

by others, as told off in charge of that particular part of the county which is comprised in its own Division. And as a matter of custom, courtesy, and convenience, and in some instances of express enactment, its members do not concern themselves with affairs of this description which must be considered as having arisen, or as properly cognizable, within the preserve of their neighbours.

It follows, from the inherent right of every county Justice to act throughout its length and breadth, that he is competent to take his seat upon the Bench of any of its Divisions. But, practically, the Justices who have attached themselves to each separate Bench confine themselves to their own Division, in which they act together as a distinct and independent body.

Every meeting, at the accustomed place of assembly, composed of two or more Justices, in the execution of their office, constitutes a Petty sessional court for the Division. And, at a petty session thus formed, all ordinary judicial business which can possibly be dealt with before a Bench of Justices may be transacted.

Previously to the recent Act, there was nothing to prevent any Justice from hearing and deciding any case which he was competent to dispose of alone, either in his own dining-room or elsewhere. Neither was there anything to hinder any two or more Justices from holding and acting in petty session at any place they might select ; provided of course that they kept within the four corners of the county. Certain matters were no doubt specially required by statute to be transacted at 'the usual place of meeting,' or at 'a place appointed for holding petty sessions'; but, except as regards these particular proceedings, they had no need to confine themselves to any special court-house. *Tempora mutantur*. This is our privilege no longer. The Summary Jurisdiction Act expressly provides that no CASE arising under that Act, or under any other Act whether past or future is hereafter to be heard, tried or determined by any court of summary juris-

diction, whether composed of one or more Justices, except when sitting in open court: a term which includes (i) a petty sessional court-house, *i.e.*, a place at which Justices are accustomed to assemble for the purpose of holding sessions; (ii) an occasional court-house, *i.e.*, a police-station or other place, previously appointed by the Justices to be used for occasional purposes.

No CASE arising under the new Act, or under any *future* Act, unless otherwise prescribed, which is triable before a court of summary jurisdiction, can be heard or adjudged by a court composed of less than two Justices. Moreover the power of Justices, when sitting otherwise than in a petty sessional court-house, is limited to the infliction of imprisonment for not exceeding fourteen days, or a fine (including costs) of not over a sovereign. And a single Justice sitting alone in such petty sessional court-house (and *à fortiori* in an occasional court-house) can impose no higher penalties.

There were a multitude of cases, as we shall presently see, with which one Justice was as competent to deal as a full Bench. With these he may deal still, provided he do so in 'open court,' and subject to virtual emasculation as regards coercive power.

Special sessions are meetings usually convened by previous notice, and held either as occasion may require or at fixed intervals throughout the year for various statutory purposes, which are commonly of the administrative rather than the judicial description. They are appointed, *inter alia*, for the transaction of Highway matters—for hearing appeals against Poor rates—for revising Jury-lists—and for licencing purposes, both under the Intoxicating Liquor Acts, and with reference to dealers in game, gunpowder, &c.

The chairman of a county Division is either elected annually by his brother Justices, or chosen from time to time, according to the custom of each particular Bench. He assumes the general conduct of business when present, but his position entitles him to no second or casting vote. And

here it may be observed that the decision of a Bench must in all cases be the decision of a majority. If, for instance, two Justices are competent, by statute, to convict of some particular offence, and there happen to be half-a-dozen present, three of whom are in favour of a conviction and three the other way, no decision can be come to, and, unless proceedings be adjourned for the purpose of obtaining the attendance of other Justices, the prisoner is entitled to be discharged.

At all such sessions it is the business of the Clerk of the Division to assist the Justices generally; to advise them, when necessary, as to matters of law and of detail; to take minutes of the proceedings in every case; to receive and transmit all fines, and to perform an immense variety of duties which can only be satisfactorily executed by a gentleman of education, intelligence and discretion. 'An ancient clerk,' declares Lord Bacon, 'skilful in precedents, wary in proceeding, and understanding in the business, is an excellent finger of a court, and doth many times point the way to the Judge himself.'

Thus much for our Divisional system, in which those Justices who act as Stipendiary magistrates take no part. They are appointed in provincial towns and populous districts, under the Municipal Corporation Act, and are distinguished from their less fortunate brethren by the very marked advantage of a salary. The local board of a city or place having 25,000 inhabitants may procure the appointment of such an official for their district.

A Stipendiary magistrate, it may be remarked, has power, when sitting in his police-court alone, to do any act, and exercise any jurisdiction, which can be done or exercised by two or more ordinary Justices; even although such act or jurisdiction be expressly required by statute to be done or exercised by Justices in petty sessional court. But he has, as a rule, no authority to act as a Justice of the peace in business transacted at special sessions, or at Quarter sessions.

CHAPTER II.

SUMMARY JURISDICTION UPON INFORMATION—PRELIMINARY PROCEEDINGS.

To resume our account of the judicial duties of a Justice. These, as we have already seen, are of a twofold nature. In the one case he sits, by virtue of his summary jurisdiction, to hear and dispose of those minor charges and complaints which are not matter of indictment, and over which (setting any question of appeal aside for the present) he has absolute authority to act as judge. In the other he has to deal with charges of a graver nature, which are brought before him for a totally distinct purpose, that of committing the alleged offender to take his trial before a jury elsewhere. We shall, in the first instance, speak exclusively of business of the former description.

It will naturally be asked, Where lies the dividing line between these two classes of offence? By what token are we to discern whether the accused, in any particular case, ought to be committed and indicted, or may be dealt with in a summary manner? The answer is not far to seek. Every offence was, at Common Law, indictable at the suit of the Crown. But whenever any offence has been made over by statute to the jurisdiction of Justices, the more formidable course of procedure has been, as a rule, thereby superseded. In some instances, as in that of assault, it is in the discretion of Justices either to deal with an offence under their summary powers, or to treat it as indictable and send it for trial, where, under the circumstances, it seems to deserve a heavier

punishment than any which they are themselves empowered to inflict. In other cases, as in that of dog-stealing, a *second* offence, after previous summary conviction, is declared to be matter of indictment. Their right to take cognisance of any particular offence is thus purely statutory, and must be created by special enactment. And this jurisdiction has sometimes been given to one Justice alone, sometimes to two or more, at the discretion or caprice of the Legislature. Previously to 1880, one Justice could send a man to six months' hard labour for maliciously damaging a garden, while it took, as it still takes, two to fine an old woman half-a-crown for being tipsy and troublesome. However, in all stages of every case, preliminary to the actual hearing, one Justice may always do every act that can by any possibility be required.

The leading rules relating to summary procedure have hitherto been written in the 11 & 12 Vict. c. 43, an enactment usually known as Jervis' Act (No. 2)—a household word on every bench. It applies to cases, generally, where an *Information* is laid before a Justice that some person has committed, or is suspected to have committed, an offence or act, within his jurisdiction, for which he is liable upon summary conviction to be imprisoned, fined, or otherwise punished. It applies also to another class of cases, to be considered hereafter, where a *Complaint* is made to any such Justice, upon which an order for the payment of money or otherwise may be founded. These last we will disregard for the present.

The first condition, then, of judicial interference is that the act should have been committed within the jurisdiction; the second, that an *Information* should be laid. As regards the first, we may observe, in addition to our remarks in the last chapter, that, under the Summary Jurisdiction Act, 1879 (sec. 46):—

1. When an offence is committed in any river, or other water running between or forming the boundary of the jurisdiction of two courts, it may be tried by either court.

2. When an offence is committed on the boundary of the jurisdiction of two courts, or within five hundred yards of such boundary, or is begun within one jurisdiction and completed in the other, it may be tried by either court.

3. When an offence is committed on any person, or in respect of any property, in or upon any carriage or vehicle employed on any journey, or on board of any vessel upon inland waters, it may be tried by any court of summary jurisdiction through whose jurisdiction such carriage or vessel may have passed in the course of the journey or voyage during which the offence was committed. And if the side, bank, centre, or other part of any road, river, or canal, traversed in the course of such journey or voyage, be the boundary of the jurisdiction of two courts, the offence is triable in either.

An Information must generally be laid by the party aggrieved; but where the offence is not an individual grievance, but concerns the public at large, anybody is at liberty to come forward for that purpose. Where no time is indicated by the statute under which proceedings are taken, it must be laid within six months of the act complained of. In some cases, the statutory period is limited to forty-eight hours. In one, at least, it is extended to three years. As a general rule, an information should be in writing, although this formality is sometimes specially dispensed with, as in cases falling within the 'Cruelty to Animals Act,' the 'Railway Clauses Consolidation Act,' &c., and is not required within the Metropolitan Police District. It must, in certain cases, be verified upon oath. This is necessary in proceedings under the 'Game Act,' the 'Malicious Injuries Act,' &c., and always, as will presently be seen, where it is expedient to arrest the accused at once. One offence only must be charged, and that in a direct and positive manner, accompanied by a statement of such facts as may be necessary to show that the legal offence was actually completed, and took place within the jurisdiction of the Justice informed. No

objection, it is true, is allowed to be taken in respect of any variance between such Information and the evidence subsequently adduced ; but by such variance must be understood a mere difference between the way of stating and the way of proving what is virtually the same thing—not a divergence which goes to the whole gist of the charge. Thus, upon an Information for assaulting a constable, it was held that the defendant could not be convicted, alternatively, of a common assault, the two offences being distinct, and created by different statutes. Any mere variance as to the time or place of an alleged offence is not material, assuming of course that the offence be proved to have taken place within the period during which an Information may legally be laid, and at some place over which the Justices have jurisdiction. And if the latter should be of opinion that the defendant was really misled in any way by the manner in which the charge was stated, they may adjourn the hearing upon such terms as they may think fit, including any necessary amendment. Two or more persons who may have joined in committing an offence may be included in one Information. Finally, every defendant, however trivial his offence, may demand to be regularly informed against, before being subjected to further proceedings.

The next step is to procure the attendance of the person charged. Where he has been already apprehended, a step which, as we shall elsewhere see, may be taken without ceremony in a great many cases, of course nothing further is necessary. He is probably already in the lock-up, ready to be produced when wanted. Otherwise, it will be necessary to enforce his attendance in more formal manner.

The issue of process for this purpose is so far a judicial as distinguished from a merely ministerial act, that if, upon the facts as stated by the complainant, it be obvious that the latter has no right to institute the charge, or that it is idle and trumperry, or that further proceedings would be altogether nugatory, the Justice may decline to take cognisance of the

matter, and cannot be compelled to do so. 'A Justice,' observed Cockburn, C. J., upon a recent occasion, 'has a discretion to exercise in such cases, and the preliminary inquiry, as to whether a charge is to go further, is as much a judicial transaction as the hearing itself would be. And, having once exercised his judicial discretion in the matter, this court can neither reverse his decision nor force him to decide the case over again.' (*R. v. Stipendiary of Leeds*, Q. B., July 2, 1877; see 41 J. P. 529.) In the ordinary course of events, however, the Justice will cause the defendant to be brought before him, either by means of a summons or a warrant. The former must contain a concise statement of the charge, coupled with an order requiring the person named to appear at a certain time and place to answer the same. It must be served upon the defendant either by delivering it to him *personally*, or by leaving it for him *with some person*, at his last or usual place of abode. It is for the Justices to decide whether the service took place a reasonable time before the hearing. In some few instances a minimum period is prescribed by statute. A warrant, which contains a similar statement, is an order to the constable, or other person to whom it is addressed, to apprehend the person wanted, and bring him before the Justices to answer the charge. A summons may be served in any part of England or Wales, and, under a recent Act, in Scotland. A warrant may be sent to any place in the United Kingdom; but as its execution implies the use of force, when necessary, it is of no avail beyond the jurisdiction of the Justice granting it, without the assent of some Justice answerable for the Queen's peace in the locality where it is to be executed. This is evidenced by his indorsing, or as it is technically termed 'backing' the warrant. The latter formality may be dispensed with in cases of 'fresh pursuit,' *i.e.*, where the object of the warrant is pursued direct into some adjoining county, and arrested within seven miles of the frontier, measured as the crow flies.

Whatever may be the nature of the alleged offence, the question whether a summons or a warrant should be employed in the first instance is for the discretion of the acting Justice. Before a warrant can issue, it is indispensable that the Information should be verified upon oath. As regards the general run of offences which fall within the pale of summary jurisdiction, a summons is usually the first step. Should it be disregarded or disobeyed, a warrant may at once be resorted to—the information being previously verified as above—and the accused has his own carelessness or contumacy to thank for the indignity of being brought up in custody.

One more point remains to be noticed before he can be finally placed in the dock. A Justice, upon sworn information that any person believed to be then in England, Wales or Scotland, is likely to give material evidence, either for the prosecution or the defence, and will not voluntarily appear as a witness, is bound to issue a summons, usually distinguished as a 'subpœna,' requiring his attendance. Previously to the Summary Jurisdiction Act, 1879, followed by the 'Process Amendment Act, 1881,' no such summons was available outside the county, borough, or place over which the Justice issuing it held jurisdiction; and even now, if intended for service beyond such limits, it is required, for reasons which are not very obvious, to be backed in the same manner as a warrant. And should such person, without just excuse, refuse to appear, then, upon proof of service of the summons, and that a reasonable sum was tendered for costs and expenses, a warrant may be issued for his apprehension. The latter course may indeed be taken at the outset, at all events where the witness is within the jurisdiction of the Justice, should the latter be satisfied, by evidence upon oath, that the witness would not attend without being compelled to do so.

The ordinary forms of Information, summons, warrant, &c., above referred to, will be found in the Appendix.

CHAPTER III.

SUMMARY JURISDICTION UPON INFORMATION—THE HEARING AND PUNISHMENT.

PREVIOUSLY to the actual hearing, one Justice may, as has been said, do all that is necessary in the way of receiving the Information, issuing the summons, &c., and, until the operation of the recent Summary Jurisdiction Act, the rule was that any single Justice might hear and determine any matter of Information, unless the presence of more than one was expressly required by the statute under which it was laid. Recent legislation has made a great change in this respect ; and we will accordingly suppose that the defendant has been brought up, or has appeared for trial, before a bench composed of two or more Justices regularly assembled.

The first step, under the new Act, will be to consider whether he stands in any danger of being sentenced to peremptory imprisonment for more than three months. Because in all cases in which this would be a possible result of his conviction (unless the charge be one of assault) the court is bound at the outset to inform him that he is entitled, if he pleases, to be tried by a jury, and to ascertain his wishes in this respect. He must make his choice before the charge is gone into, and not afterwards ; and, should he claim to be tried by a jury, the court are required to deal with the case in all respects as if he were charged with an indictable offence, and not with an offence punishable on summary conviction.

The above (section 17) does not apply to the case of a child under twelve, unless his parent or guardian happen to be

present in court. The Justices are required to ascertain that fact, and, if he is, to address the above question to such person, and take his decision upon the point.

To return, however, to the main line. The substance of the Information is first of all stated to the accused by the clerk, and he is asked whether he has any cause to show why he should not be convicted. And if he admit the charge and show no sufficient cause, convicted he will be accordingly. Before passing sentence in such a case, the Justices will, if they see fit, call for evidence of the circumstances of the offence, and the character of the defendant, as elements to be taken into consideration in apportioning his punishment.

Should the defendant, however, decline to admit the truth of the Information, the prosecutor and his witnesses, if any, will be heard. And, if the defendant be not represented by counsel or attorney, it is usual to remind him of his right to cross-examine each witness before he leaves the box.

The accused will then be called upon for his defence, when he will be at liberty to comment upon the evidence for the prosecution, to make any statement he pleases in his own justification, and to bring forward his own witnesses. The prosecutor is not entitled to reply, unless in the event of some point of law having been raised on the other side, as, for example, that the Information, taken as true, discloses no legal offence. In such case, he may be heard, either by himself or his counsel, upon that point alone. If, however, the defendant have called witnesses (other than merely as to character) the prosecutor is at liberty to call witnesses of his own, to rebut their testimony; after which no further discussion is allowed.

It will be observed that the process under consideration being either actually, or in the nature of, a criminal proceeding, the defendant is, as a rule, precluded from giving evidence on his own behalf, and cannot be examined by the prosecutor. The latter, therefore, must not be permitted to ask him any question, and the Justices themselves will abstain from doing

so. A prisoner is entitled to keep his own counsel ; and to draw him into a conversation, even with no adverse intention, is both irregular and unfair. Of course if, at the conclusion of the case, he has left some point unexplained in his defence which, if uncovered, is sufficient to ensure his conviction, it is right to bring it to his attention.

The Justices will then consider the matter, and convict, or dismiss the Information, as the case may be.

If the defendant be convicted, a minute is made by the Justices' clerk, and the conviction is afterwards drawn up, and lodged with the Clerk of the peace. This document, or an examined copy, produced from the proper office, is, generally speaking, the appropriate evidence when it becomes necessary to *prove* a previous conviction.

If the Information be dismissed on the merits (*i.e.*, not through some failure upon a mere point of form, or because the prosecutor fails to appear), an order of dismissal may (if required) be made, of which the defendant is entitled to a certificate. This latter document is without further proof, a bar to any subsequent proceedings in respect of the same matters against the same party. In all cases of conviction, the court may order the defendant to pay to the prosecutor such costs as they may consider reasonable ; but as a general rule (sec. 8) costs are not to be awarded where the fine does not exceed five shillings. In cases where the Information is dismissed, a like order may be made against the prosecutor. Within the Metropolitan Police District, whenever Informations are either dropped, or appear to have been laid upon improper or frivolous grounds, Justices have the power of awarding such amends not exceeding £5 to be paid by the informer to the accused, for his loss of time and expenses, as they may consider just.

It is not to be expected that the hearing of any particular case should run its course undiversified by check or incident, and in smooth accordance with the regular programme. Points will arise, and questions will be started left and right. The

plaintiff or the defendant may fail to appear—objections may be raised upon the score of irregularity in process, want of jurisdiction, or interest upon the part of a sitting Justice—an adjournment may be found necessary—witnesses may refuse to do their duty, and difficulties in the way of evidence are pretty certain to mix in the crowd.

Matters such as these force themselves upon the attention of the Justice from the first hour that he takes his seat; and readiness in dealing with them is no bad test of a man's fitness for acting at all. Not to divert attention, however, from the main stream of our story, we will only observe that a Note in Part II., under the head of 'Practice,' is devoted to this branch of the business; and that its contents, together with those of 'Evidence,' and 'Summary Jurisdiction,' may be considered as a sequel to the present chapter.

To return to our prisoner. Supposing him to have been convicted, the next point is to punish him. His sentence will of course be *prima facie* subject to the provisions of the statute under which the conviction took place. An important mitigating power in this respect has, however, recently been conferred on Justices. It is provided by the Summary Jurisdiction Act, 1879, (sec. 4) that where they have authority to adjudge imprisonment or to impose a fine, they may, notwithstanding any enactment to the contrary, adjudge imprisonment without hard labour, and reduce the prescribed period; and, in the case of a first offence, reduce the appointed fine. The 'scale of imprisonment for the nonpayment of money' (sec. 5), which will be found at page 22, is a still more important provision in the direction of leniency. Moreover, where a statute (other than the Act itself—see page 41) authorises imprisonment, and gives no option of imposing a fine, the court may nevertheless, if they think the justice of the case will be better met by fine than imprisonment, impose a fine not exceeding £25, and not being of such amount as would subject the offender, under the scale just mentioned, to any greater term of imprison-

ment, in default of payment, than that to which he would have been liable by the statute under which he was convicted. As regards 'trifling offences,' see page 37. These powers are applicable to summary proceedings of every kind, with the sole exception of those taken under any Act relating to the regular or auxiliary forces. It may be added that by the Summary Jurisdiction Act, 1884, (sec. 3), so much of any Act as directs that a person on nonpayment of money adjudged to be paid on summary conviction or order shall be liable to be whipped, or to any other punishment than imprisonment with or without hard labour is absolutely repealed.

Should the statute, however, authorise a sentence of imprisonment pure and simple, and should the Justices see fit to inflict it, the business is brief. Their clerk will hand up a warrant of commitment, specifying the defendant's name and offence, as well as the duration of his intended punishment, specially mentioning 'hard labour,' should such form part of the sentence. This warrant after having been signed by the Justice or two of the Justices convicting, will be delivered to the officer in charge of the prisoner, who will conduct him to gaol to undergo his sentence.

Again, should the Justices, as is frequently the case, be empowered to impose a fine, with the alternative of a specified term of imprisonment on non-payment, the offender, in default of payment before the rising of the court, is committed in precisely similar manner. He may, however, at any time during his imprisonment, pay to his gaoler the amount for which he has been committed, together with the costs, if any, and at once recover his liberty.

Hitherto, prompt cash for a fine has always been the rule, and there were very sufficient reasons for not listening to the customary petition for 'time' to pay. Under the recent Act, however (sec. 7), Justices are expressly authorised to make any concessions which they may think fit as regards the time of payment, the liquidation by instalments, or the acceptance

of security, with or without a surety, for the amount. It is to be noted that any such security, whether in the case of a fine or other ordered payment, is given and received (sec. 23) 'in substitution for other means of enforcing such payment ;' see page 46.

Should the statute, however, merely authorise the imposition of a money penalty, whether in the way of fine or compensation, without saying anything about imprisonment in default, the following rules must be regarded, and may be taken as part of the very alphabet of summary justice.

Suppose the statute simply provides for a fine of £5 with costs, and the Justices simply impose it. If the prisoner pay the money, well and good. But what if he cannot, or will not, pay ?

Here the standard process of compulsion is by warrant of distress. Under this authority which may be at once issued, or may be delayed at the discretion of the court (sec. 21), the constable to whom it is directed may levy the sum specified upon the goods of the defendant by distress and sale. And if sufficient distress be not found within the jurisdiction of the Justice granting the warrant, he may levy in any other county or place, having first had his warrant backed by some Justice having jurisdiction there.

The defendant need not necessarily be detained in custody during this operation. The Justice issuing the warrant may suffer him to go at large, either with or without security for his re-appearance upon the return of the warrant. And, if the constable report that he can find no goods, or that the goods found and sold have only been sufficient to reduce and not to clear off the amount adjudged, with costs, the Justice may commit the defendant to the House of Correction for a term the duration of which, as we shall elsewhere see, may be measured by the extent of the deficiency.

We spoke a short time since of a sentence of imprisonment pure and simple. In such case, it must not be forgotten that the defendant has the costs of his conviction and convey-

ance to prison to pay, as well as his sentence to undergo. And, whenever it is intended to enforce a payment of this kind, it is competent to the Justices to order that such costs, if not paid forthwith, be levied under warrant of distress; and, in default, that the defendant continue in prison for a time not exceeding, in any case, one calendar month after the expiration of his original term, unless such costs with all incidental expenses be sooner paid.

Finally, whenever the court is satisfied in the case of any person liable under conviction to a warrant of distress, that his goods, if sold, would be insufficient to realise the money payable by him, or that the levy of the distress would be more injurious to himself or his family than his actually going to prison, the court, instead of issuing the warrant, may order him to be imprisoned for a period not exceeding that for which he would have been liable to be locked up in case the warrant had been issued and no goods found.

We have, accordingly, two distinct methods of coercion applicable in cases where a fine is imposed. The one consists in marching the offender at once to prison, as the direct consequence of refusal or inability to pay; the other in realising the money itself, by seizure and auction of his goods and chattels. The first is undoubtedly the simpler of the two, and the menace of immediate prison, as the alternative of prompt payment, is generally effectual where the defendant has either cash or credit at command. Procedure by distress, on the other hand, has peculiar terrors of its own. Nobody, who could possibly avert it, would consent to the visitation and violation of his home, or submit to see his furniture carried away in a cart. An obstinate party cannot, as in the other case, elect to go to prison rather than produce his fine. The broker will do his errand; and, if the full amount be not realised after all, the balance will have to be atoned for in the House of Correction. The subject, in its practical aspect, is of such importance that we must endeavour to place it in as plain a light as possible.

Proceedings by distress would at first sight appear to be the natural and proper remedy where a debt, rate, tax, or the like, is obstinately withheld by the person liable, without reasonable excuse. If a man owes me £5, for example, it may be a very incomplete satisfaction to be told by a court of Justice, 'We have ordered him to pay you, and if he does not he will stand committed for a month.' My debtor may be one of those stubborn spirits who court martyrdom. I would, of course, rather think of him in gaol than otherwise if I am fated to lose my money. But his punishment is not my primary object, which is centred in the desire to recover my £5. I would much rather see his tables and chairs knocked down in the sale-room than watch him 'doing his time,' and gradually extinguishing the claim which a court undertook to enforce.

Proceedings by imprisonment, on the other hand, seem the natural and proper remedy in the case of penal fines authorised by the Legislature, where the offender from any cause refuses to pay. Here we are not enforcing a debt, but exacting a penalty demanded in satisfaction of justice. The liability should be thrown upon the offender of providing the fine at his peril, and the court should have nothing to do with the process, nor any duty beyond that of punishing him in the event of failure. Observe that to prison he must go at last, if even with the best intentions he find it impossible to pay. Also, that by no method of distress can you add one sixpence to his available means; while by his imprisonment, the intensity and duration of which is absolutely within the discretion of the Legislature, justice, unlike the private creditor, is really satisfied. The offence is expiated and the example made. We say nothing here as to the expediency of allowing him *time* to collect funds, which is another affair, and independent of the main question.

None of the above considerations appear, however, to have been much regarded by the framers of our penal statutes.

In some cases, as has been already stated, we find a special term of imprisonment designated in the event of non-payment of a prescribed fine. In others, without any perceptible reason for the divergence, we find no such alternative ordained, and the fine simply left to be enforced by distress, with ultimate imprisonment should this process prove ineffectual. Here the offender is not only denied the chance of saving his money by accepting imprisonment, but there is no power to imprison him without first rummaging his house to ascertain whether the court fine can by any possibility be scraped together. Unlike Shylock, the Justice must make the money penalty his object, and recover it if he can. The pound of flesh, in the shape of a committal to the House of Correction, is only to be cut *faute de mieux*.

It became palpable, at last, that in the case of comparatively trifling penalties it would be wiser not only to ignore the distress process altogether, but to establish a set system of equivalents, by which a fine of given amount should carry a given term of imprisonment in case of default. It was in this view that the 'Small Penalties Act, 1865,' was passed, providing that every offender adjudged to pay a penalty not exceeding £5 (and not relating to Inland Revenue) might be imprisoned upon non-payment, *without distress*, for a term calculated according to the amount imposed, and for no longer period, anything in the statute creating or dealing with his offence notwithstanding. This Act continued in force until repealed by the Summary Jurisdiction Act, which provides that—

'The period of imprisonment imposed by a court of summary jurisdiction under this Act, or under any other Act, whether past or future, in respect of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, shall, notwithstanding any enactment to the contrary in any past Act, be such period as, in the opinion of the court, will satisfy

the justice of the case, but shall not exceed in any case the maximum fixed by the following scale':—

AMOUNT.	MAXIMUM PERIOD.
Not exceeding 10s.	Seven days.
Exceeding 10s., but not exceeding £1	Fourteen days.
Exceeding £1, but not exceeding £5	One month.
Exceeding £5, but not exceeding £20	Two months.
Exceeding £20	Three months.

such imprisonment to be without hard labour, except where hard labour is authorised by the Act on which the conviction is founded, in which case the imprisonment may, if the court thinks the justice of the case requires it, be with hard labour.

The reader will at once detect an important difference between the tenor of these two enactments. Under the former, every offender sentenced to a penalty not exceeding £5 might be imprisoned, without distress, for a time proportionate to the amount of his adjudged and unpaid fine. The latter says nothing of the kind. It does not, like the Act which it repeals, confer the power of directing imprisonment in lieu of distress. It merely says that if imprisonment be imposed by statute as the consequence of non-payment, or shall be applicable in default of distress, such imprisonment shall not exceed the maximum fixed by scale.

Consequently, if there be no power, under any given statute, by virtue of which a person may be committed for non-payment in the first instance, there is none under the new enactment; and, the 'Small Penalties Act' being extinct, there is nothing left but the remedy by distress. Take the case, for example, of fines for drunkenness imposed under the 35 & 36 Vict. c. 94, sec. 12. This section does not authorise commitment in default of payment. Drunkards who could not or would not pay went to prison under the 'Small Penalties Act.' The repeal of that enactment renders it necessary to proceed by distress warrant in the first instance.

We cannot at all events send them to prison without first pressing the domestic inquiries referred to at page 19.

It is difficult to suppose that so capricious and retrograde a movement was contemplated by the framers of the Act. If they really considered that the 'Small Penalties Act' was a mistake, in cases where a statute makes no provision for imprisonment as the direct consequence of non-payment of a fine, it was pure timidity to stop short of dispensing with such imprisonment altogether. There was no reason for drawing the line between statutes which authorise, and statutes which do not authorise, this alternative. Such a provision was sometimes omitted through reliance upon the operation of the 'Small Penalties Act' itself. The result, however, stands as follows:—The salutary power of directing immediate imprisonment in lieu of distress where the amount of fine is less than £5 no longer exists, unless expressly conferred by the statute under which conviction takes place. Secondly, the mitigating machinery of the new Act extends to *all* cases of conviction, military matters excepted (see page 17), whatever may be the nature of the proceedings or the amount in question.

Costs ordered to be paid by a prosecutor whose information is dismissed are recoverable in the same way as sums ordered to be paid by a defendant.

Our story would still be incomplete if we neglected to mention the ultimate destination of penalties extracted with such relentless ingenuity. It is written accordingly in Jervis' Act that, if the statute, under which they are inflicted and recoverable, contain no special directions upon this head, they are to be paid to the treasurer of the county, riding, borough, or place for which the Justices shall have acted; for which such treasurer shall give a receipt without stamp.

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found to cause the before him, with a told, should there be p. Let us take the table offence, such as within the limits of person is suspected, tender. If the police is already in custody, in is saved. Otherwise a enforce his appearance, n. We will not repeat mer chapter, with refer- ess is substantially the indictable or non-indict-

CHAPTER IV.

INDICTABLE OFFENCES—COMMITTAL FOR TRIAL.

WE have touched upon so much of the Justice's judicial duty as relates to the trial, conviction, and punishment of non-indictable offences cognisable under his summary jurisdiction. We have now to consider the course of dealing with crimes of a more serious description, in respect of which it may become his duty to send the accused for trial, either at Quarter Sessions or the Assizes as the case may be. One Justice, as already observed, may do all that is necessary in the matter.

In all cases, then, in which a Justice is informed (1) that any person *has committed*, or is *suspected of having committed*, any indictable offence within the limits of his jurisdiction; or (2) that any person guilty, or supposed to be guilty, of such an offence (wherever committed) is residing, or suspected to be residing within it, he may cause such person to appear before him to answer the charge.

This 'preliminary examination,' as it is termed, being no branch of the summary jurisdiction, may take place in any room or building within the county or borough of the Justice presiding. Such place is not to be deemed an open court; and the Justice at his discretion may order that no person have access to, or remain in it, without his permission, if it appear to him that the ends of Justice will be best answered by so doing.

The words in clause (1) which we have marked in italics must be understood as including commission either actual or

constructive within the jurisdiction of the Justice. Thus, any felony or misdemeanour committed upon the boundary, or within five hundred yards of the boundary, of two counties, or begun in one county and completed in another, may be dealt with, tried, and punished in either. And when any such offence has been committed upon any person or property in or upon any waggon, cart, or other carriage, employed on any journey, whether by road or rail, or on board of any vessel upon inland waters; the offender may be required to answer for his offence in any county through which the carriage or vessel may have passed in the course of that journey or voyage.

As regards (2), the right of a Justice to call before him any person charged with having been guilty of an offence indictable in England or Wales, and being then within his jurisdiction, is absolute. It does not in the least matter where he committed it. He may have been guilty of felony upon the high seas; he may have murdered an Ethiopian in the Mountains of the Moon; or he may merely have had an indictment found against him in another county, and taken refuge in that in which he is discovered.

In all these cases, the Justice is bound to cause the accused or suspected person to appear before him, with a view to his ultimate commitment for trial, should there be sufficient grounds to justify that step. Let us take the simplest case, and suppose that an indictable offence, such as arson or homicide, has been committed within the limits of a division, and that some particular person is suspected, whether rightly or wrongly, as the offender. If the police have been on the alert, perhaps he is already in custody, in which case a good deal of trouble is saved. Otherwise a summons must be issued, in order to enforce his appearance, or a warrant to effect his apprehension. We will not repeat what we have already said in a former chapter, with reference to these missives. The process is substantially the same, whether the offence be of the indictable or non-indict-

able order. Only, while in the latter case it is usual to begin with a summons, in the former, where the charge is commonly of a more serious nature, it is the practice as a rule to issue a warrant in the first instance. Whenever this step is resorted to (and in such case only) a written Information is indispensable, describing and charging the offence, and verified upon oath, either by the informant or one of his witnesses.

The accused, then, either having appeared to a summons or being brought up in custody, is placed in the dock, and proceedings at once begin. Generally speaking, a remand is asked for, upon the part of the prosecution, at this early stage. It is usually impossible, except in the most transparent cases, to have all the evidence at hand in the first instance which would justify the committing a prisoner to take his trial, or supply the depositions to accompany him. But very slight evidence is enough to justify his detention until the charge can be resumed after fuller inquiry, and with all necessary witnesses in attendance. For this purpose, the Justice may, at his own discretion, verbally desire the constable or person in charge of the accused, or any other person whom he may appoint for the purpose, to keep him in his custody for a space not exceeding three clear days. Or he may by warrant from time to time remand him to some prison or place of security, for a space not exceeding eight clear days, until the time appointed for proceeding with the case. It is in his discretion to order the accused to be again brought before him previously to the expiration of any remand; and he may, at any time, should he think it right to do so, permit him to go at large, upon his entering into a sufficient recognisance, with or without sureties, conditioned for his re-appearance in due course.

Should either side require to enforce the attendance of persons whom they may wish to call as witnesses, it may be done in manner similar to that described with reference to summary proceedings: see page 12. But the Act of 1879

has no reference to the proceedings incident to a committal for trial, and should a proposed witness happen to be outside the jurisdiction of the Justice, there are no means of enforcing his attendance except by a Crown Office subpoena, which is of force throughout the Kingdom and may be followed by an attachment if disobeyed.

Upon the day appointed for continuing the hearing, the prosecutor and his witnesses as well as the accused being present, and either side, should they think fit, being represented by counsel, the case is opened by a brief statement upon the part of the prosecutor, who then proceeds to bring forward his witnesses. The latter will be examined upon oath, their depositions being taken down by the clerk, in the first person, and as nearly as possible in the exact language used. Any material remark volunteered by the prisoner during any part of the proceedings should be similarly recorded. At the close of each witness' examination, the accused or his counsel is at liberty to cross-examine him, and the answers will be taken down in the same manner as those obtained upon the examination-in-chief. All these depositions will then be read over to, and signed, respectively, by the witnesses who have made them, as well as by the presiding Justice. And any such deposition may be used against the prisoner at his trial, in case of the previous death of the witness making it, or of his being so ill at the time as to be unable to attend.

If, after hearing all the evidence for the prosecution, the Justice be of opinion that it is not sufficient to put the accused upon his trial, the latter is entitled to be forthwith discharged.

It is to be observed that the ordinary rules of evidence, which will be noticed elsewhere, apply equally to such cases as the present as to those in which the Justice is dealing with a matter as to which his jurisdiction is final. Supposing, for instance, the *only* available evidence against a prisoner to consist of his own confession, and it were to appear that

such confession was made in consequence of language addressed to him either by a constable or some person directly injured by the offence, implying that it would be better for him to speak the truth, or to the like effect, the Justice ought to treat such confession as if it had never been made, and at once dismiss the charge.

Should he be satisfied, however, that the evidence adduced by the prosecutor is sufficient to put the accused upon his defence, he will read, or cause to be read to him the depositions already taken, and, after informing him of the precise legal charge which he has to answer, will address him in the following terms :—

‘ Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so ; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial. And you are also clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to you to induce you to make any admission or confession of your guilt ; but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat.’

Any statement which the accused may make in answer must be taken down, read over to him, signed by the Justice, and placed with the depositions ; and such statement may be given in evidence against him at his trial.

The Justice will then proceed to demand of the accused whether he wishes to call any witnesses. If so, their statements upon oath will be taken, both by way of examination and cross-examination, provided they know anything of the facts of the case, or anything tending to show the innocence of the accused. Such depositions will be reduced into writing, read over to the persons making the same, and otherwise treated in precisely the same manner as the depositions for the prosecution.

Should this last evidence be such as to supply, in the opinion of the Justice, a sufficient and conclusive answer to the charge, the accused will be at once released. Should the Justice on the other hand consider it his duty to send the matter for trial, he will either commit the accused to the gaol or House of Correction for safe custody during the interim, or admit him to bail. He will also bind over by recognisance the prosecutor and his several witnesses as well as all witnesses called for the defence (not being mere witnesses to character), who may, in his opinion, have given evidence in any way material to the case, or tending to prove the innocence of the accused, to appear at the court at which the accused is to be tried and prosecute or give evidence respectively. Minors and married women are constantly thus bound over; and the Justice may by warrant commit to prison any witness refusing to be bound, until the trial. A prosecutor, however, who may be unwilling to take any further trouble in the matter, cannot, if he has not given evidence, be bound over against his will. In such case the Justice may bind a constable or some other witness to prosecute. But if the prosecutor has given evidence, he may be bound over to appear as a witness, and committed to prison in the event of refusal. The court to which the accused will be sent for trial, we may observe in passing, depends to some extent upon the nature of his offence. The distinction between the jurisdiction of Quarter Sessions and Assizes, as regards this point, will be noticed in Chapter VII.

The power of taking bail for persons committed for trial extends to all charges short of High Treason. But it is no longer sufficient (as previously to his committal) that the prisoner should simply be bound over in his own recognisance. He must now obtain such surety or sureties as, in the opinion of the Justice, will be a substantial guarantee for his appearance at the time and place where he is to be tried. In the case of certain indictable offences short of felony, the accused is entitled as matter of right to be allowed his bail; always

provided that the sureties proposed are considered satisfactory.

In any event, since the sole ostensible reason for confining a man in prison to await his trial is to secure his attendance, if that point can be attained by less stringent measures it is clearly wrong to lock him up. Hence, whether the question be as to the propriety of admitting him to bail at all, or as to the amount of security to be demanded, the Justice will have to consider what, under the circumstances of each particular case, ought to be done or conceded, with reference to the main object in view. The position in life of the accused, the nature of the offence charged, the probability of a conviction, and its possible consequence in the way of punishment, are all elements in the consideration. Persons accused of capital offences are of course beyond the pale of this indulgence, and whenever a heavy sentence of penal servitude is not an impossible contingency, the propriety of accepting any amount of bail becomes extremely questionable.

Should the accused fail to appear to take his trial, the recognisances of his sureties will be estreated. They may, however, at any time relieve themselves from further anxiety in the matter by surrendering their friend to any Justice having jurisdiction, who will either remit him to prison or accept some other bail.

We have hitherto spoken of the simplest case which can arise, namely, where a person is brought before a Justice charged with committing a crime within that Justice's immediate province. Here all is plain sailing. There is no possible conflict of jurisdiction, and no question as to the county in which the accused should be sent for trial. A crime is always triable, *i.e.*, may always be tried, in the county within which it was committed, and the general rule is that it is not to be tried elsewhere; although the exceptions to the latter doctrine are both numerous and important.

In the case of Larceny, or plain theft, for example, the offender may be tried within the county where the actual

offence was committed ; but he may be tried equally well in any part of the kingdom in which the plunder was found in his possession. So, upon a charge of bigamy, the offender may of course be tried in the county where the criminal marriage took place ; but he may be tried also wherever he may be apprehended or in custody. And the offence known as 'False pretences,' if made by letter sent from one county to another, may be tried and punished in either.

Let us suppose, however, the case of a prisoner brought before a Justice of one county, which we will call Cornwall, charged with an indictable offence committed in some other county, which we will call Northumberland, and not triable elsewhere. Under these circumstances, what is the Cornish Justice to do ? He has full power, as we have seen, to entertain the charge. But obviously he cannot commit the accused for trial in his own county, a course which, by the supposition, would be simply nugatory. His duty is to examine the witnesses, and receive such evidence as may be produced before him, and if, in his opinion, the charge be sufficiently maintained, to commit the accused to some Northumbrian gaol, to await his trial in that county, binding over the prosecutor and witnesses to appear there in due course and do their duty. Of course the question of bail is not affected by this measure.

On the other hand, if the evidence tendered in support of the charge be not in his opinion sufficient to justify him in committing the accused for trial, he is not to discharge him then and there. He is entitled and bound to shift the responsibility upon some Northern Justice, and to send the accused by warrant 'before some Justice or Justices of the peace in and for the place where, and near unto the place where the offence is alleged to have been committed.' With the prisoner will be sent the information and depositions in the case, which are to be treated by the Northern Justice exactly as if they had been taken in his own court ; and it

is he who will ultimately decide whether, under all the circumstances, a commitment or liberation ought to take place. Notwithstanding this rule, however, if the Cornish Justice be satisfied that he has before him the *whole* of the evidence available in the case, and that it is clearly insufficient to justify a commitment, he may safely discharge the accused without further ceremony. The expense of the above transmission, when carried into effect, is payable by the county or place to which the accused is forwarded.

The committal of a person for trial may in some cases be matter of the most ordinary routine, while in others it is a step involving very grave responsibility. Even upon the assumption that justice is certain to be done in the end, it is no light matter, when unconvinced by the prosecutor's evidence, to inflict upon a man the injury to character, anxiety of mind, and loss of time and money, which are the inevitable consequences of sending him before a jury. It is true that inconveniences of this kind must be resolutely inflicted and patiently endured when public interests are at stake. It is also true that very unpleasant surgical operations are at times indispensable. But, if any such operation might have been avoided by a little more judgment or experience on the part of the ordinary medical adviser, he will hardly, if he be wise, attempt to pacify his patient by any truism of the kind.

The Justice will at the same time recollect that it is not his office to *try* the case. If the evidence against the accused be such as, in the exercise of a sound discretion, he feels is not sufficient to demand an answer, or if the answer given to it by the prisoner or his witnesses be practically complete, he will of course discharge him from further prosecution. If on the other hand the incriminatory evidence be strong in itself, and cannot be absolutely disposed of by the other side, it is not for him to weigh the probabilities of a case which he has no commission to decide. Nothing is more common indeed than the indirect usurpation of such a function, as when a prisoner is dismissed upon the ground that the case

is one in which no jury would convict. But this can only be safely said where the prosecutor's evidence is inherently weak, and fails as a *prima facie* ground of committal, or where it is absolutely accounted for and overthrown by evidence on behalf of the accused.

It occasionally happens that, upon a prisoner being brought up, the prosecutor is anxious to proceed no further, and objects to offer evidence. In these cases (always assuming that there is no suspicion of a compromise having been effected), it is the practice, under special circumstances and after adequate explanation, to permit the charge to be withdrawn.

We may remark, in conclusion, that whenever a charge which may involve commitment for trial happens to be heard before two or more Justices—and in important or difficult cases it is very desirable that it should be so heard—a committal must be the act of the majority. Should there be an equality of opinions for and against, the proper course is to adjourn for the attendance of additional or other Justices, and then to re-swear the witnesses and read over to them their previous depositions, as well as the prisoner's statement if any, when a majority may probably be obtained.

CHAPTER V.

SUMMARY JURISDICTION UPON INFORMATION—INDICTABLE OFFENCES.

EVERY offence, as we observed a short time since, was originally indictable at the suit of the Crown. Every accused person, we may add, has by Magna Charta a right to be so indicted—in other words a right to stand exempt from punishment until convicted by the verdict of his peers. ‘Nullus liber homo capiatur, vel imprisonmentur, nec super eum ibimus, nisi per legale iudicium parium suorum, vel per legem terræ.’ But to allow every petty offender to avail himself of this privilege would be absurd upon the face of it. We should be a nation of jurymen; slaves of the box and book. Therefore an immense number of minor delinquences have been removed from the indictable category, and given over to the more rapid handling of Justices with summary jurisdiction. And ‘this inroad upon our ‘sacred bulwark,’ which was matter of sheer necessity, has as yet led to none of the disaster so mournfully prophesied by Blackstone.

It is obvious, however, that certain offences which still remain in the indictable class, and entitle the accused person to be tried before a jury, may lie pretty close beside the border line, and might occasionally be transferred across it with advantage, provided only that proper machinery could be arranged for that purpose. They may have been attended by mitigating circumstances. Or they may have been the errors of children, or young persons, whom it is desirable to spare, if possible, the exposure of a public trial. In short, for a variety of reasons, it may appear that the ends of

justice would be as well or better answered by the settlement of such cases before a bench of Justices, instead of by means of the far more dilatory and costly process consequent upon indictment. Provision has accordingly been made for these exceptional cases, without infringing in any instance upon the right of going before a jury should the person chiefly interested desire to do so. Few matters are of greater practical importance or require to be more thoroughly understood.

Two statutes, passed between twenty and thirty years since,—the ‘Juvenile Offenders’ Act’ and the ‘Criminal Justice Act’—were directed to the above object. The former applied to young persons under sixteen: the latter to persons of any age whose offences were either trifling as measured by a pecuniary standard, or who preferred to plead guilty and accept such punishment as Justices were authorised to inflict, rather than take the chance of an acquittal, accompanied by the possibility of a sterner sentence elsewhere. Neither of these statutes were models of scientific legislation, but they are now beyond the reach of criticism, having been swept aside by the Summary Jurisdiction Act, 1879. The sections of this statute, which replace them, will, it is to be hoped, fulfil their purpose; and their provisions ought to be at the finger-ends of every Justice. They apply (1) to children; (2) to young persons; and (3) to adults.

It is necessary to observe at the outset that, by section 20, sub-sec. 8, no proceedings of this kind can be taken except by a petty sessional court, sitting on some day appointed for hearing indictable offences, of which public notice has been given, or at some adjournment of such court. Also that, by section 27, the procedure in these cases must, until the court assume the power to deal with the offence summarily, be the same, in all respects, as if the charge were to be dealt with throughout as an indictable one. Directly the court assumes such power, the subsequent proceedings will be the same, and subject to the same rules, as in a case punishable upon summary conviction.

Moreover (sec. 24) the court may, for the purpose of ascertaining whether it is expedient to deal with the case summarily, either before or during the hearing, adjourn the case, and remand the accused, exactly as in the course of an ordinary preliminary examination (see page 26); and, if the court be not, at the time of the charge, a petty sessional court, it may adjourn until the next practicable petty sessions, remanding the accused for that purpose, if necessary, for more than eight days.

I. Children, (sec. 10).—When a child (*i.e.*, a person who, in the opinion of the court, is under the age of twelve) is charged before a court of summary jurisdiction with any indictable offence, other than homicide, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, are to cause the charge to be written down and read to the parent or guardian of the child, if present. They will then after an explanation of the import of the question (should such appear to be necessary), demand of the parent or guardian whether he desires the child to be tried by a jury, and objects to its being summarily dealt with. If so, the proceedings will continue, and the child will be committed or discharged in the usual manner. Should the parent or guardian not chance to be present, the court may either remand the child for the purpose of giving him notice to attend if he pleases, or may deal with the case summarily, at their discretion.

When a case of this kind is dealt with in a summary manner, the court, upon conviction, may inflict the same description of punishment as might have been inflicted had it been tried upon indictment (see page 55), Provided that—

- (a) imprisonment shall be substituted for penal servitude;
- (b) imprisonment shall never exceed one month;
- (c) no fine shall exceed forty shillings;

- (d) if the child be a male, he may be ordered, either in addition to or instead of other punishment, to be as soon as possible privately whipped with not more than six strokes of a birch rod, by a constable in the presence of an Inspector or other police officer of higher rank than a constable, and (should he desire to be present) of the parent or guardian of the child.

Nothing in the above is to prejudice the right of the court to send the child to a reformatory or industrial school, or render any child punishable who is not in the opinion of the court above the age of seven years *and* of sufficient capacity to commit crime.

N. B.—If upon the hearing of a charge for any offence punishable on summary conviction under the Act which we are now considering, or under any other Act past or future, the Justices think that, though the charge is proved, the offence was of so trifling a nature that it is inexpedient to inflict any punishment, or more than nominal punishment, they are at liberty, under section 16, *without proceeding to a conviction*, to dismiss the Information, and (if they think fit) to order the person charged to pay such damages not exceeding forty shillings, and such costs, as they may consider reasonable. Or the court *upon convicting* the person charged, may discharge him conditionally upon his giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either with or without payment of damages and costs or either of them. But this indulgence is not applicable to the case of an adult convicted under the Summary Jurisdiction Act of an offence in respect of which he has pleaded guilty, and of which he could not, if he had not pleaded guilty, have been convicted by a court of summary jurisdiction (*vide infra*, p. 40).

We shall revert to the subject of juvenile punishment generally, in some remarks under the head CHILDREN, in Part II.

II. Young Persons, (sec. 11).—Where a young person (*i.e.*, a person who, in the opinion of the court, is between twelve and sixteen) is charged before a court of summary jurisdiction with any indictable offence specified in the opposite Schedule, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, having regard for this purpose to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, are to cause the charge to be written down and read to that young person. They will then, after an explanation of the import of the question (should such appear to be necessary) demand whether he or she desires to be tried by a jury, or consents to the case being summarily disposed of. Should the latter alternative be acceded to, the court may deal summarily with the offence, and, upon conviction, adjudge a fine not exceeding £10, with imprisonment (distress being out of the question) as per scale (page 22) without hard labour, in default. Or the court may adjudge peremptory imprisonment, with or without hard labour, for not exceeding three months; and if the young person be a male, and, in the opinion of the court, under the age of fourteen, may, if they think it expedient to do so, either in substitution for or in addition to any other punishment, adjudge such young person to be, as soon as practicable, privately whipped with not more than twelve strokes of a birch-rod by a constable in the presence of a police officer of higher rank, and, should he desire to be present, of the parent or guardian of such young person.

Nothing in this section is to prejudice the right of the court to send the young person to a reformatory or an industrial school.

It will be more convenient, perhaps, to place the Schedule of offences above referred to between this and the next or 'Adult' division of the subject.

SCHEDULE (a).

Indictable offences which may be dealt with summarily.

1. Simple larceny : see page 286.
2. Offences declared punishable as simple larceny, [*e. gr.*, larceny as bailee ; stealing valuable securities ; metal, &c., attached to buildings ; trees above a certain value, &c. See offences 15, 18, 19, 23, &c., page 295.]
3. Larceny from the person.
4. Larceny as a clerk or servant.
5. Embezzlement by a clerk or servant.
6. Receiving stolen goods under 24-5 Vict. c. 96, s. 91, 95.
See Part II., RECEIVERS.
7. Aiding or abetting offences, 1, 2, 3, or 4.
8. Attempting to commit offences, 1, 2, 3, or 4.

The Act also applies, *in the case of a child or young person*, to certain offences in relation to railways (see page 398, Offences 8, 9) ; and to any indictable offence in relation to the Post Office. (See Appendix, page 475).

III. Adults, (sec. 12).—Where an adult (*i.e.*, a person who, in the opinion of the court, is of the age of sixteen or upwards) is charged before a court of summary jurisdiction with any one of the above eight offences, and where the value of the whole of the property alleged to have been stolen, injured, embezzled, or received, as the case may be, *does not, in the opinion of the court, exceed forty shillings*, or, in the case of a mere *attempt*, whatever may have been the value of the property threatened, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the same summarily, having regard to the character and antecedents of the person charged, the

(a) The parallel columns of offences printed in the Act need not be reproduced here. They were perhaps proper with a view to rigid definition, but they give a complicated aspect to the whole business and are really needless for practical purposes.

nature of the offence, and all the circumstances of the case, are to cause the charge to be written down and read to the person charged. They will then, after an explanation of the import of the question (should such appear to be necessary) demand of the accused whether he or she desires to be tried by a jury, or consents to the case being summarily dealt with. Should the latter alternative be acceded to, the court may deal summarily with the offence, and, upon conviction, adjudge imprisonment, with or without hard labour, for not exceeding three months, or a fine not exceeding £20, recoverable by distress in the first instance, with imprisonment as per scale (page 22) without hard labour, in default.

Where the value of the property, as in the last paragraph, in the opinion of the court, *exceeds forty shillings*, the court are no longer authorised under any circumstances to *try* the case summarily. They can only deal with it upon a plea of guilty from the accused. In such case, when the court, at any time during the hearing, become satisfied that the evidence is sufficient to put the person charged upon his trial, and are further satisfied that the case is one which, having regard to the character and antecedents of the accused, the nature of the offence, and all the circumstances of the case, may properly be dealt with summarily, and may be adequately punished under the Act, they will cause the charge to be written down and read to the person charged. They will then explain to him that he is not obliged to plead or answer, and that if he pleads guilty he will be dealt with summarily, and that if he does not plead or answer, or pleads not guilty, he will be committed for trial in the usual course. The court will then, after fully explaining the import of this alternative, give the accused to understand that he is not obliged to say anything unless he desires to do so, but that whatever he may say will be taken down in writing, and may be used against him at his trial, and that he has nothing to hope from any promise of favour, or to fear from any threat, which may have been held out to him to induce him to admit his guilt, but that

whatever he then says may be used against him, notwithstanding. After this admonishment the court will ask him whether he is guilty or not guilty ; and if he says that he is guilty, they will cause a plea of guilty to be entered, and adjudge him to be imprisoned with or without hard labour for any term not exceeding six months.

If, on the other hand, the prisoner does not plead guilty, whatever he says in answer is to be taken down in writing and read over to him, signed by a Justice present, and transmitted with the depositions in the case, and may be given in evidence against him at his trial without further proof.

A previous conviction does not necessarily disentitle a person to the advantage of the Act; but (sec. 14) no adult person is to be thus dealt with if it appear to the court that his offence is one which *owing to a previous conviction on indictment* is punishable with penal servitude.

A summary conviction for any of the above offences is to have the same effect as a conviction for the same offence upon indictment (sec. 27 (3)), and the court may make the like order for the restitution of property as might have been made by the court before whom the person convicted would have been tried, had he been tried on indictment: see RESTITUTION.

Finally (sec. 28) where an indictable offence in which the prosecutor's expenses would otherwise have been payable out of the local rate, is summarily dealt with as above, the court may, if it seem fit, grant to the prosecutor a certificate of the compensation which may seem reasonable for his time, trouble, and expenses, including fees, and such other expenses as are by law payable when incurred before a commitment for trial; and such certificate is to have the effect of an order of court, in the case of a prosecution for felony, under the 7 Geo. IV., c. 64.

CHAPTER VI.

SUMMARY JURISDICTION UPON COMPLAINT.

SUMMARY Jurisdiction, as has been mentioned already, is applicable in two distinct classes of cases. First, where Information is laid that some person has committed an offence for which he is liable, under this process, to be imprisoned, fined, or otherwise punished. Secondly, where *complaint is made* to any Justice or Justices, upon which he or they have authority to make any Order for the payment of money or otherwise.

Hitherto we have spoken exclusively of cases of the former description, all of which involve charges of a criminal nature. It may be as well to remark that this epithet includes, in its wider aspect, a good many acts of disobedience or neglect for which, in ordinary conversation, we should certainly find a different name. A man who drives the wrong side of the road for example, or forgets to have his child vaccinated, would naturally object to it. But in either case he is liable to be proceeded against by Information, convicted, fined, and imprisoned in default of payment. And it is in these penal consequences that he must be content to discern the true nature of his conduct. The distinction is not unimportant. In cases of a criminal or quasi-criminal character, for instance, he is debarred, it may be recollected, from giving evidence on his own behalf. On the other hand there is a legal presumption in his favour, which would not belong to him as a mere civil defendant.

Cases of the second class, matters of complaint as they are called, stand upon a very different footing. They imply no sort of criminality, either actual or constructive. No conviction is asked; no punishment is in the air. All that is wanted is an Order upon the party complained against, to pay a sum of money, or to perform a particular act—to do in short some duty which it is within the power of Justices to compel. A Complaint accordingly takes the place of an Information. It need not necessarily be in writing: it is not supported upon oath: and its peaceful nature is testified by the fact that no warrant can, under any circumstances, be issued upon it in the first instance. Otherwise the subsequent proceedings, as regulated by Jervis' Act, are similar to those upon Information, leading up, however, to an Order in place of a conviction.

We frequently, indeed, find it provided in statutes that some penalty, or sum in its nature penal, may be recovered upon 'Complaint' before Justices. But the word is here used in its broad and general acceptance, and not in the special and technical sense which we are now considering. The penalties in question will really be recovered upon Information, the form of which, in fact, runs 'The Information and Complaint of A. B.,' &c.

When we speak of an Order for the payment of money, it will be understood that Justices do not hold a small-debts court, and that the enforcement of demands of this description forms no part of their general duty. Their cognisance of such matters is limited to cases where, as under the 'Employers and Workmen Act,' and in other instances, they are specially required to entertain them. Certain Rates, and other payments of a periodical description, are statutorily recoverable upon Complaint. But no mere claim for money due is within the provisions of the Summary Jurisdiction Acts, unless the actual judicial Order of a court of summary jurisdiction is necessary to enforce it. In the case of Poor rates, for example, no such Order is asked or needed. The Justices

merely issue their warrant in respect of a sum already ascertained and payable under statutory authority, and exercise no discretion as to the validity of the demand.

Complaints, as we have said, may be either as regards the non-payment of money, or may point to the doing of some act which Justices have authority to enforce. Thus, upon Complaint that an apprentice has enlisted for a soldier, Justices may order his commanding officer to deliver him up; upon Complaint that a dog is savage or dangerous, they may order that it be either destroyed or kept under proper control; and on Complaint that a tree overhangs a railway so as to endanger the trains, they may issue the equally judicious Order to cut it down.

The power of a court of summary jurisdiction to bind a person over to keep the peace, or to be of good behaviour, is in future to be exercised upon the Complaint of the person desiring this precaution. No wrong, requiring vindication, is supposed to have been done; and the necessary Order, which is simply intended to prevent wrong, is obtained in peaceful form:—See SURETIES OF THE PEACE.

Of course disobedience to an Order entails punishment, and exposes the defendant to the calamities provided by the statute under which proceedings are taken. These will take the form of a warrant of commitment or distress, according to the circumstances of the case. No such warrant, however, can issue until the defendant has been served with a minute of the Order itself.

It is provided by the Summary Jurisdiction Act (sec. 6) that where, under any other Act, whether past or future, *a sum of money claimed to be due* is recoverable upon Complaint, and not upon Information, such sum shall be deemed to be a 'civil debt.' And (sec. 35) that any sum declared by the Act itself, or by any future Act, to be a 'civil debt,' recoverable summarily, or in respect of the recovery of which jurisdiction is given to a court of summary jurisdiction, shall be deemed to be a sum for payment of

which an order may be made upon Complaint. It is further provided that no warrant shall be issued for apprehending any person for failing to appear to answer any such Complaint; and that no order for the payment of any such 'civil debt,' or for the payment of any costs in the matter, shall, in default of distress or otherwise, be enforced by imprisonment, unless it be proved to the satisfaction of the court that the person making default has withheld payment when the means of making it were in his power. In such case, the court has the same power of imprisonment as a county court would have under the Debtors' Act, 1869 (32-3 Vict. c. 62, sec. 5), which extends to a maximum sentence of six weeks. But no such imprisonment will operate as a satisfaction or extinguishment of any debt or demand, or deprive any person of any right to take out execution against the effects of the person imprisoned, in the same manner as if it had not taken place.

Proof of the means of a person making default as above may be given in such manner as the court shall think just; and for the purpose of such proof, the person himself and any witnesses may be summoned and examined upon oath. And under the Summary Jurisdiction Rules, 1880 (18—28), the ultimate power of imprisonment cannot be exercised unless a 'judgment summons,' *i.e.*, a summons to appear for the above purpose, has been served two days in advance upon the debtor. It is not necessary, as a preliminary to such summons, that a distress warrant should have been applied for.

The scale of imprisonment (page 22) in respect of non-payment of money adjudged to be paid by a conviction, or in default of a sufficient distress, applies equally (sec. 47) to the period to be imposed in respect of money adjudged to be paid by an Order, where such sum is not a civil debt, nor enforceable as such. The owner of the dangerous dog above noticed, for example, is liable to be adjudged to pay 20s. per day, in default of complying with an Order to chain

him up. This penalty, if incurred, would not be 'a sum of money claimed to be due upon complaint,' and consequently would not be a civil debt.

Any sum which may become due *from a surety*, in pursuance of any security given under the Act, is to be counted, and to be recoverable upon complaint, as a civil debt. When a security has been given in respect of a sum adjudged to be paid *by a conviction* (*ante*, p. 17) the court, upon forfeiture, may enforce payment *from the principal* as in the case of a simple fine (*ib.*); otherwise, even in his hands, the forfeited money is only a civil debt. And any sum paid by a surety on behalf of his principal is equally to be deemed a civil debt due to him from such principal : see section 23.

Conspicuous among matters of complaint stand proceedings in Bastardy. Here the object is not to punish the father, but merely to make him provide for the child. Except as regards some particular steps in the process, which will be found fully described elsewhere, the proceedings are not regulated by Jervis' Act. The mother has the peculiar privilege of bringing her complaint before any petty sessional court, within whose jurisdiction it may suit her to be resident for the time being. She may call upon a bench in Middlesex to summon a defendant from the Land's End, to show cause why he should not support a child born at Berwick-on-Tweed. On the other hand the defendant has the privilege of appealing from an order against him ; while if her own application be refused upon the merits, she must accept the decision as final. The Summary Jurisdiction Act (see sec. 54) applies to the levying of sums adjudged to be paid by an order in any matter of bastardy, and to the imprisonment of the defendant upon non-payment, as if such order were a conviction *on Information*, and by no means leaves the mother's weekly allowance a matter of mere 'civil debt.'

CHAPTER VII.

QUARTER SESSIONS AND APPEAL.

WE have hitherto spoken of the Justice in his subordinate capacity as exercising summary jurisdiction and committing for trial, or performing such of his administrative duties as may be discharged at petty or special sessions. At Quarter Sessions he takes his place as a member of his County Authority, invested with both judicial and administrative powers of a higher and more comprehensive order.

Quarter sessions in counties are held in the first full week after the 31st of March, the 24th of June, the 11th of October, and the 28th of December. The first date, however, may be varied, so as not to interfere with the Assizes, the limit lying between the 7th of March and the 22nd of April. In Boroughs, they are held once a quarter, or at such other or more frequent intervals as the Recorder may think fit, or the Crown may direct.

These courts when held quarterly, at the usual times appointed for the purpose, are properly called the General Quarter Sessions of the peace. When held at other, or intermediate, times, they are the General Sessions of the peace. There is no difference between the two, either as regards authority or jurisdiction, except in some particular cases where jurisdiction is expressly given by statute to the Court of General Quarter Sessions alone.

The criminal jurisdiction of these sessions extends, by statute of King Edward III., to the trying and determining

of all felonies and trespasses whatsoever. The 5 & 6 Vict. c. 38, provides, however, that neither the Justices of any county, nor the Recorder of any Borough, shall at any Session of the peace try any person for treason, murder, or capital felony; or for any felony which in itself (*i.e.*, apart from a previous conviction) is punishable with penal servitude for life; nor for any of the following offences, namely, perjury—forgery—bigamy—blasphemy—libel—abduction—conspiracy—concealing birth—offences against the Queen or Parliament—unlawful oaths—firing crops, woods, heather, &c.—night poaching, under certain circumstances—stealing judicial records—or stealing, destroying or concealing wills, or any evidence of title to real estate.

In counties, the jurisdiction of the court of Quarter Sessions, whether sitting as a criminal court or as a court of appeal, is exercised by the entire body of Justices, or by as many as find it convenient to be present, under the presidency of their chairman or, as in Middlesex, of a salaried Judge. In Boroughs, having a separate court of Quarter Sessions, the Recorder of the Borough sits as sole judge.

We have already in Chapter IV. explained the ordinary process of committal for trial. Where this committal is made to Quarter Sessions, the actual 'indictment' is prepared and engrossed on a slip of parchment by the proper officer, in the Indictment Office. The names of the witnesses who are intended to be examined before the Grand jury are inscribed upon the back.

The Grand jury, whose office it is to hear one side of the case only—namely the evidence for the prosecution, and to decide whether it is sufficiently cogent to put the accused upon his defence, must be at least twelve, and not more than twenty-three, in number. At the commencement of the sessions, after a charge from the chairman or judge of the court, the bills of indictment which have been preferred are placed in their hands. They then retire to their own apartment and privately examine the witnesses whose names appear

in support of each charge. If they are *satisfied* from the testimony of any single witness that there is *prima facie* ground for the accusation, they need go no further. But they are bound to be thoroughly persuaded of the truth of an indictment, so far as their evidence goes ; and not to content themselves with mere possibilities. On the other hand, they have no business to reject a bill, without examining every witness tendered in its support, since *non constat* but that the last man might say all that was needful. It is necessary that a majority consisting of twelve at least should concur in finding a bill. So soon as this point has been arrived at, the foreman indorses upon the parchment the words ' a true bill,' signs his name, carries it into court, and hands it to the Clerk of the peace, who thereupon announces to the court the substance of the charge and the indorsement. The prisoner, against whom the Bill is found, is then arraigned upon it at the bar, and pleads either ' guilty ' or ' not guilty.' In the former case it only remains for the court to pronounce sentence ; in the latter the petty jury are sworn, and the Clerk of the peace charges them with the prisoner by reading over to them the indictment, and informing them of his plea. A person charged with felony may peremptorily challenge twenty jurors without assigning any cause for so doing. He may afterwards challenge as many more as he pleases, for reasons then and there to be stated and proved ; as, for instance, upon the ground of relationship to the prosecutor, or for having evinced some prejudice in the case. A misdemeanant is restricted to challenges of the latter description. But no challenge can be made until a full jury appears, or after the juror objected to has been sworn. Prisoners are usually tried in the order in which their indictments have been found. But, as a point of etiquette, felonies are allowed precedence over mere misdemeanours ; while, among misdemeanours themselves, the ' custodies ' are taken first ; *i.e.*, those in which the accused are waiting below, in charge of the police, instead of being outside on bail.

The appellate jurisdiction of the court of Quarter Sessions from convictions or orders which have been made in petty or special sessions, will be found considered in Part II. under the title 'Appeal.' Appeals intended to be heard at Quarter Sessions must be entered with the Clerk of the peace within the time limited by the practice of the court, and are called on by him in the order of their entry. Should the appellant fail to appear, his appeal will be struck out of the list, and will not be restored except by consent of the other side, or some satisfactory explanation of his absence. In appeals against a conviction it is always for the respondent to begin. It was he who made the charge originally, and it has become his business to fight the battle over again. The same rule is observed in most other cases. Counsel and witnesses on either side are then heard, according to an established course of procedure, after which the chairman delivers the judgment of the court, either confirming, modifying, or quashing the decision appealed against.

Justices in Quarter or General Sessions form the County Authority, to whom the making of the county and other important rates, as well as the control of county business generally, is entrusted. Illustrations of these various matters will be found abundantly scattered throughout the following pages, especially in those containing a brief detail of the functions of that conspicuous officer the 'Clerk of the Peace.' It would be inconsistent with the object as well as with the limit of these notes, to enter upon a province in which we could be of no material service. The duties of a Justice as a member of his County Authority and of its various committees, are emphatically matter of experience, easily learnt by those who devote their attention to them, and which need not be further touched upon at present.

CHAPTER VIII.

NOTE ON THE SUMMARY JURISDICTION ACTS, 1879 AND 1884

THE Act of 1879, which was wet from the hands of the Queen's printer when the first edition of these Notes went to press has now become part and parcel of our ordinary routine. It was followed by the Summary Jurisdiction (Process) Act, 1881, regulating the service of process between this country and Scotland, and more recently by the Summary Jurisdiction Act, 1884; all which, together with Jervis' Act (11 & 12 Vict. c. 43), are included in the series of statutes known collectively in England as the 'Summary Jurisdiction Acts.' We will reprint a few comments made in the last edition upon the Act of 1879 before touching upon the latest addition to the canon, *i.e.*, the Act of 1884.

The provision (page 5) which prohibits a single Justice from acting at all until he has been reduced to the last stage of impotence as regards coercive power, and which renders the presence of two Justices *primâ facie* essential in matters arising under all future Acts, is, of course, a step towards extinguishing the single jurisdiction altogether. There may be sound reason for this preference for the dual system, but to make the discovery in 1880 was to make it rather late. The matter is adverted to elsewhere, at page 390.

The restrictions, as regards *locality*, upon the discharge of judicial duty, supplemented by the invention of that miniature divan with a rather listless-looking name, the 'occasional court house,' have been indicated already, and will

be found at page 4. They are distinguished by a conscientious ardour for innovation, which can endure to leave nothing untouched. Method and organization are to be the order of the day. Slipshod habits are to be eradicated at once. Everything is to be done regulation fashion, and with the precision expected from rank and file.

That these violent improvements should have been productive of a certain amount of perplexity and trouble is not to be wondered at. No sudden alteration, however desirable, can be made without upsetting somebody. Whether they will conduce to the better working of an old-fashioned machine, in whose good going the country at large is considerably interested, will be discovered in due time. Method and organization may be too rigidly insisted upon. They are, after all, only means to an end, and may be means unsuited to the particular end in view. And, in the case of certain special services, it may be unwise to carry the obligations of routine to the point at which they become inconvenient and irksome, or are, perhaps unreasonably, regarded as measures of distrust.

In speaking (Chapter III.) of the prominence given by the new Act to the remedy by distress, allusion was casually made to the question as to how far facilities in the way of time, &c., should be allowed a defendant in order to collect funds to meet his fine. Upon this point the Act is far from being silent. The permission, however, to take his money by instalments, and to accept security for the amount (page 17) seems tinctured with overweening tenderness for the convenience of persons who have been condemned to make a payment which was intended to be penal and inconvenient. It is, of course, undesirable to send offenders needlessly to prison. On the other hand, since Justices must work by punishment, it may be as well not to display too vivid an anxiety to keep them out of it. We worry too much about people who have set the law at defiance, to the danger and discomfort of society. We apologize for being obliged ever

to make a show of protecting our own. The rod which our grandfathers used to 'pickle' must be remorsefully moistened with rose-water; and we drive a fiddling bargain over the fine of which the chief sting used to lie in the swift and certain alternative.

The Act permits every person who would be liable to imprisonment upon conviction for more than three months (except in assault cases) to decline Justices' jurisdiction altogether, and to insist upon going before a jury. The effect of this is to circumscribe the authority of Justices with reference to cases which they had previously been entrusted with power to try, as well as to encumber the Sessions with matters which would otherwise have been disposed of elsewhere.

A broader question is suggested by what has just been written. Take the case of a person whose indictable offence may be dealt with and disposed of summarily under the Act, and whose sentence cannot, under any possible circumstances, exceed three months. That person must either be under sixteen, or his alleged offence must have been committed in respect of property worth less than 40s. Except in the case of a mere child, it must be one of the offences scheduled at page 39. It cannot be of any graver description. Is there any real reason why such a person should be entitled to *demand* judge and jury? Justices have the power of sending him to Sessions or Assizes against his will, if 'having regard to his character and antecedents, the nature of the offence, and all the circumstances of the case,' they consider it inexpedient to assume jurisdiction themselves. But is there anything dangerously daring and revolutionary in suggesting that, *in these particular cases*, the offender's 'rights' might very well be so far infringed upon as to give him personally no choice about it? Why should he have any such rights now-a-days? Why should the mere technical aspect of his offence, irrespective of the amount of punishment by

which it may be visited, be made a test in the matter? Why should not a Bench be entitled to say, 'We are satisfied that we can inflict adequate punishment, having regard to all the circumstances, and we intend to deal with the case ourselves accordingly.' In the great majority of instances the prisoner's prayer is, not that he may be sent for trial, but that the business may be settled upon the spot. And this petition is constantly ignored. Justices, in fact, are always anxious to relieve themselves of the responsibility of deciding cases which ought obviously to be discussed before a higher tribunal. There is little fear of their disposing of any charge which in point of fact ought to go to Sessions, or which the accused, upon any reasonable ground, may desire should be tried there. But, on the other hand, to allow the latter at his own uncontrolled option, or in the exercise of simple whim, to walk away from their jurisdiction and insist upon his privileges as a felon, or indictable misdemeanant, is carrying complaisance and scruple to the extreme.

Take a case which occurred the other day. A grocer's boy was charged with embezzling ninepence. The case was as clear as case could be. A whipping would have squared matters within half an hour. But this grocer's boy had his suspicions about the birch-rod, and was resolved to run all hazards rather than find them verified then and there. So he promptly announced that he would rather be tried by jury. Thereupon the bench had to bind over the prosecutor and some four witnesses to attend and give evidence, at all the usual trouble and loss of time. Ten days afterwards he came up for trial at the Middlesex Sessions. The Assistant-Judge summed up for a conviction, observing, as he did so, upon the absurdity of sending up a child for indictment upon such a trumpery charge. For this the committing Justices were not to blame. However, the gentlemen of the jury not only coincided in the censure, but gave emphasis to their opinion by acquitting the prisoner.

Any scheme such as that just suggested would have been

inconsistent with the whole tenor of the recent Act. It is merely offered in this place for the consideration of those who can so far ignore tradition as to regard the matter in its practical aspect.

Speaking of the birch-rod, it seems a pity that when the framers of the Act were dealing with 'young persons' between twelve and sixteen, they should have excluded all those above fourteen from the advantage of a whipping fairly earned. Sixteen is the age of emancipation from this particular form of punishment adopted in most statutes; and nobody who looks at the general run of boys of that age, as they stand in the dock, will be of opinion that it has been fixed unduly high.

The provisions (page 36) for the summary punishment of children is unfortunate in one respect. The Act provides that for certain indictable offences the court 'may inflict the same *description* of punishment as might have been inflicted had the case been tried on indictment'—imprisonment, however, being substituted for penal servitude. But as regards the common offence of larceny, and a large majority of others which are triable upon indictment, there is, under such procedure, no power to inflict a fine. Consequently, the mildest form of punishment known to the law is inapplicable in the case of a child. Fining a child no doubt means fining the parent; but in the case of children who, as the phrase is, ought to have been taught better, this may be a perfectly legitimate course, and was clearly contemplated by the Act, which provides that no fine, when inflicted, shall exceed 40*s*. This was of course an oversight; but one would surely have expected that, when dealing specially with the case of children, the Legislature would have been at the pains to devise special penalties, instead of hashing up the dish which had been prepared for older offenders.

It is not clear why, in an Act such as the present, the misdemeanour known as 'False Pretences' should have been excluded from the list of delinquencies made summarily triable. There seems no reason why the man who sells

painted sparrows to ladies' maids should not receive happy despatch, without the intervention of grand and petty jury. A schoolboy, some short time since, obtained sixpennyworth of liquorice from a sweet-shop, under the pretence that it was required by a respectable old lady well known to the shop-keeper (incorrectly described by the young gentleman as 'his aunt'), who had been unexpectedly called upon to receive and regale company. As he happened to be under twelve, the court were competent to deal with the case; but, had he been one year older, he must imperatively have been sent for trial, to abide the verdict of his peers.

SUMMARY JURISDICTION ACT, 1884.

This Act is announced as an Act to repeal divers enactments rendered unnecessary by the Summary Jurisdiction Acts, &c., and to make further provision for the uniformity of summary proceedings. Its provisions have been so far worked into the text of the present edition that comment in this place need be but brief.

Section 3 repairs an omission in the Act of 1879. In conferring upon Justices a variety of mitigating powers touching sentences of fine or imprisonment (see page 16), the fact that under certain old statutes a defendant was, in some few cases, liable to be whipped in default of ready money had been overlooked. It is unlikely enough that anybody would have been thus treated at the present time of day, but now we are safe against accidents.

Section 6.—Under the Act of 1879, any person authorised by any past Act to appeal from a summary court to Quarter Sessions might at his pleasure adopt either the conditions and regulations prescribed by the particular statute authorising his appeal, or those provided by the Act of 1879 and stated at page 71. This section declares that he must in every case

adopt the latter. The consequence is that the special provisions of a multitude of statutes have been left high and dry. For this reason, and for the sake of uniformity in other respects, a sweeping raid has been made by this section and its attendant schedule upon some 140 statutes. A corresponding number of sections have been either wholly or in part condemned as no longer law. Probably about 500 new holes have been picked in the statute book. The impartiality with which laws of ancient date have been disturbed in their slumber, and dug up for mutilation in mixed company, is whimsical enough. Few of us, perhaps, have ever heard of an enactment 'to prevent the purchasers of metal buttons from being deceived as to the real quality of such buttons.' But this feeble old Act has been disinterred and eviscerated with as much gravity and precaution as if it were ever likely to crawl again alive into Court.

Section 7.—The expression 'court of summary jurisdiction' does not occur in Jervis' Act. By the Act of 1879 it is defined to mean 'any Justice or Justices of the peace, or other magistrate by whatsoever name called, to whom jurisdiction is given by, or who is or are authorised to act under the Summary Jurisdiction Acts, or any of such Acts.'

We are now told that doubts have arisen as to whether the above definition extends to such Justices, &c., when acting under some other Act than the Summary Jurisdiction Acts, and that it is expedient to remove such doubts. And it is declared accordingly that 'the above definition shall include such Justice, Justices, or magistrate, whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his or their commission, or by the common law.'

That is to say, it includes Justices, &c., *who are authorised to act under the Summary Jurisdiction Acts, but who are not acting under those Acts*, but under some other Act, or by virtue of their commission, &c. Whether all old doubts have been dispelled, and no new doubts invited by this

later definition must for the present remain an open question.

Section 8.—It is declared that sec. 30 of the Act of 1879 empowers Justices in Quarter Sessions, or a borough council, to provide more than one petty sessional court-house should it be thought necessary or expedient so to do. ‘And, for the further removal of doubts, it is hereby declared that a petty sessional court-house or occasional court-house for the use of the Justices of any county may be outside the limits of the petty sessional division for which such court-house is provided, and may be either in the said county or in any adjoining county or borough; and, for the purposes of the jurisdiction of any Justices acting in such court-house, the same shall be deemed to be within the county and the petty sessional division for which such Justices act.’

THE JUSTICES' NOTE-BOOK.

PART II.

NOTES OF MATTERS AND OFFENCES, ALPHABETICALLY ARRANGED.

ABDUCTION. Under the 24-5 Vict. c. 100 ;

1. (Sec. 53). Where any woman, of any age, shall have any interest whatsoever, absolute or contingent, in any property whatsoever,

(i) Whosoever shall, from motives of lucre, take away or detain her against her will, *with intent* to marry or carnally know her, or to cause her to be married or carnally known by another, or

(ii) Whosoever (if she be under twenty-one) shall fraudulently allure, take away or detain her out of the possession and against the will of her father or mother, or other person in lawful charge of her, with intent as above :—Felony. [Pen. Serv. 5—14 years ; or impr. 2 y.]

2. (Sec. 54). Whosoever shall by force take away, or detain against her will, any woman of any age, with intent as above :—Felony. [Same.]

3. (Sec. 55). Whosoever shall unlawfully take or cause to

be taken any unmarried girl under sixteen, out of the possession and against the will of her father or mother, or of any other person in lawful charge of her :—Misdemeanour. [Impr. 2 y.] See page 366 ; also CHILDREN, page 119.

Not triable at Sessions. Bail 'discretionary.'

ABORTION. Under the 24-25 Vict. c. 100, s. 58, any woman, being with child, who shall, with intent to procure miscarriage, unlawfully administer to herself any poison or other noxious thing, [or thing which, as administered, is noxious, *R. v. Cramp*, Feb. 1880, 5 Q. B. D. 307,] or use any instrument or other means : and any person who, with intent to procure the miscarriage of any woman (whether with child or not), shall unlawfully administer to, or cause to be taken by her, any poison, &c., or use any instrument, &c., is guilty of felony. [Pen. Serv. 5 years—Life ; or impr. 2 y.]

And (sec. 59) whosoever shall unlawfully supply or procure such poison, &c., or instrument, knowing its intended use, is guilty of a misdemeanour. [Pen. Serv. 5 y. ; or impr. 2 y.]

The offence under section 58 is not triable at Sessions. Bail in any case 'discretionary.'

ABUSIVE LANGUAGE. 'The words scoundrel, rascal, miscreant, liar, fool, and such like general terms of scurrility, may be used with impunity,' so far as any cause of civil action is concerned, 'being part of the rights and privileges of the vulgar' (Blackstone, ed. Christian, III. 8). Neither are they criminally cognisable, unless used by way of actual challenge ; see *AFFRAY*. See also (within the Metropolitan Police District), 2 & 3 Vict. c. 47, s. 54, cited under *POLICE OF TOWNS* (9), page 349 ; and *SURETIES FOR GOOD BEHAVIOUR*.

ACCUSING OF CRIME. It is felony to accuse, or threaten to accuse, any person of an offence punishable with death, or with penal servitude for not less than seven years, or of any attempt to commit rape, or of committing or soliciting unnatural crime—with intent to extort money or any valuable thing, (24-5 Vict. c. 96, s. 47). The culprit should,

if possible, be arrested on the spot, and detained until he (or she) can be given in charge. [Penal Serv. 5 years—Life; or impr. 2 y. with whipping, if a male under sixteen]. Not triable at Sessions. Bail 'discretionary.'

See THREATENING LETTERS.

ADULTERATION OF FOOD AND DRUGS. Provision is made by the 'Sale of Food and Drugs Act, 1875' (38-9 Vict. c. 63), amended by the 42-3 Vict. c. 30, (1879), for the appointment of persons to be Analysts of all articles of food and drugs sold within their districts. The word 'food' includes every article used for food or drink by man, except drugs and water. The word 'drug' includes medicine for external as well as internal use.

Any purchaser of any article of food or drug is entitled to have the same analysed by the Analyst for the place of sale, on payment of a fee not exceeding 10s. 6d.; or, in his absence, by some other public Analyst, and to receive a certificate of the result (sec. 12). No proceedings can be taken until such certificate has been obtained (sec. 20).

Any medical officer of health, inspector of nuisances, &c., or police-constable employed for that purpose by the local authority, may procure and submit for analysis any sample of food or drugs, (sec. 13), see *Horder v. Scott*, May 4, 1880, 5 Q. B. D. 552. If any such officer, &c., apply to purchase any such sample when 'exposed to sale, or on sale by retail, on any premises, or in any shop or stores' [or in any street, or open place of public resort—see Amendment Act, sec. 5] the person so exposing is bound to sell, under a penalty of £10 (sec. 17). Certain special provisions with regard to the sale of MILK will be found under that title. Provision is made for securing the identity of the article sold with that submitted for analysis. The purchaser (whether private or official, *Parsons v. Birmingham Dairy Co.*, June 16, 1882, 9 Q. B. D. 172) is bound forthwith to notify to the seller, or his agent selling the article, his intention to have

the same analysed by the public Analyst, and to offer to divide his purchase into three parts, to be then and there separated, marked and sealed or fastened up,—one for himself, one for the vendor, and one to be sent to the analyst (sec. 14).

‘When the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, *the person causing the analysis to be made* may take proceedings for the recovery of the penalty herein imposed for such offence before any Justices in petty sessions, having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser’ (sec. 20). But the summons must be served, in the case of perishable articles, not later than twenty-eight days *from the date of the purchase*, and at least seven days before the hearing (see Amendment Act, sec. 10).

At the hearing, the certificate of the analyst is *prima facie* evidence, but the defendant is entitled to require his personal attendance. He may also tender himself and his wife as witnesses (sec. 21). Justices have the power, in cases of difficulty, of sending articles to the Chemical Officers at Somerset House for analysis (sec. 22). Appeal to General or Quarter Sessions (see page 73). All penalties enforceable by distress.

OFFENCES.

[See, if necessary, note on Summary Jurisdiction.]

1. (Sec. 3).—‘No person shall mix, colour, stain, or powder . . . any *article of food* with any ingredient or material, so as to render the article *injurious to health*, with intent that the same may be sold in that state,’ nor sell the same. Penalty not exceeding £50. Subsequent offence an indictable misdemeanour.

2. (Sec. 4).—No person, except in accordance with the demand of the purchaser, shall mix, &c., ‘any drug with

any ingredient or material so as to affect injuriously the quality or potency of the drug, with intent,' &c., 'nor sell any drug so mixed,' &c. [same punishment].

No person is liable to conviction, under either of the above sections, if he show to the satisfaction of the court that he did not know of the article or drug sold being mixed, &c., and could not, with reasonable diligence, have known it (sec. 5). But this excuse it will be observed is not conceded elsewhere.

3. (Sec. 6).—'No person shall sell, to the prejudice of the purchaser, any article of food, or any drug, which is not of the nature, substance and quality demanded by such purchaser.' Penalty not exceeding £20.

The above does not apply where any matter *not injurious to health* has been added because required for the preparation of the food, &c., as an article of commerce, in a state fit for carriage or consumption, and not fraudulently, to increase the bulk, &c., or to conceal inferior quality. Neither does it apply in the case of proprietary medicines (see POISON), nor in the case of unavoidable mixture with extraneous matter, in process of collection or preparation. As regards the words 'to the prejudice of the purchaser,' see page 65.

4. (Sec. 7).—'No person shall sell any compound article of food, or compound drug, which is not composed of ingredients in accordance with the demand of the purchaser.' Penalty not exceeding £20.

No offence is committed under the two last mentioned sections where any food or drug is sold mixed with anything not injurious to health, and not added with the fraudulent intention of increasing bulk, &c., or concealing inferior quality, provided that, at the time of sale, the vendor supply to the purchaser 'a notice by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed' (sec. 8).

It is sufficient if knowledge of this fact be shown to have been brought home to the purchaser by any other means ;

since, if the latter choose to deal upon that footing, it is clear that no offence has been committed. The seller may do this by a general notice placarded in his shop. At any rate he need not stick the notice on each bottle or packet, if he give it in some reasonable way : *Sandys v. Small*, 3 Q. B. D. 449 ; *Gage v. Elsey*, Feb. 1883, 52 L. J. M. C. 44.

5. (Sec. 9).—‘No person shall, with intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it, so as injuriously to affect its quality, substance or nature,’ nor ‘sell any article so altered without making disclosure of the alteration.’ Penalty not exceeding £20.

‘If the defendant prove to the satisfaction of the Justices that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, *and with a written warranty to that effect*, [a mere invoice is not sufficient, *Rook v. Hopley*, 3 Exch. D. 209, and see *Harris v. May*, Nov. 1883, 53 L. J. M. C. 39,] that he had no reason to believe, at the time when he sold it, that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but he shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence’ (sec. 25).

6. (Sec. 27).—Every person who shall wilfully give a label falsely describing the article sold, or who shall apply to any article, in any proceedings under this Act, a warranty given in relation to any other article, or who shall give a false warranty in writing to any purchaser in respect of food or drug sold by him, as principal or agent, is liable to a penalty not exceeding £20.

The Act contains special provisions for the examination of tea by the Commissioners of Customs at the various ports (sec. 30).

Penalties go to the authority appointing the analyst, if the prosecution be by their officer. In other cases to the Treasurer of the County, &c.

The above Act has been noticed at some length on account of its great value in repressing a species of dishonest dealing worse even than short weight. Under an absurd quibble it was long contended that an officer buying goods for the purpose of analysis, and not for his own private consumption, was not a purchaser who could be 'prejudiced' under section 6 (Offence 3). Of course, if so, he had personally no ground of complaint, and no right to ask for a conviction. Indeed, since he only bought with an eye to detective purposes, it may be feared that the genuine article was the very last thing which he desired for his money (a). The question, which threatened at one time to bring this most useful Act to a deadlock, was at last disposed of. 'It was necessary to introduce some words into the Act to require that the article sold should be inferior to that asked for, and the words "to the prejudice of the purchaser" are introduced with that object. What is meant by them is, a general prejudice to customers.' Per *Lush, J., Hoyle v. Hitchman*, Mar. 28, 1879, 4 Q. B. D. 233. However, to make assurance doubly sure, it is provided by the 'Sale of Food and Drugs Act Amendment Act, 1879' (with reference to Offence 3), that in any prosecution for selling to the prejudice of the purchaser any article of food or drug not of the nature, substance, and quality demanded by such purchaser, it shall be no defence to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Nor that the article, though defective in nature, substance, or quality, was not so in all three.

(a) It is not so certain, perhaps, that the exact article demanded is always that which even the private purchaser would prefer. Unfermented wine and a ghastly substitute for pale ale are supposed to enliven the blither moments of the teetotaler. Ill-natured people will be glad to learn that when the Borough analyst at Salford, not long since, examined nine samples of the former beverage he found that six of them contained alcohol in fair amount; while one specimen, labelled 'The selected wine of the Temperance fraternity,' was not only conspicuously fortified, but is described as 'really a generous liquor.' Imitation or mock coffee, i.e., any substance (except chicory) such as

Spirits.—‘In determining whether an offence has been committed under section 6 of the Act (Offence 3) by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than 25 degrees under proof for brandy, whiskey or rum, or 35 degrees under proof for gin,’ (Amendment Act, sec. 6); *Gage v. Elsey*, 52 L. J. M. C. 44.

‘Proof spirit,’ we may observe, according to the British Pharmacopœia, contains $47\frac{1}{2}$ per cent. of water.

AFFRAY. An affray (*affrayer*) is the misdemeanour of fighting in public to the terror of the lieges. When the Queen’s peace is thus broken, either by an impromptu fight or a premeditated battle, any private individual is at liberty to interfere in the public interest to part the combatants, and may without ceremony arrest any or either of them *during the continuance of the affray*. And the latter, upon being taken before any Justice, having jurisdiction, may be bound to good behaviour and to keep the peace (see **SURETIES**), or at once committed for trial. As regards prize-fights, a Justice, upon notice that any such performance is in contemplation, should cause the parties concerned to be brought before him, either by summons or warrant, and bind them over as above. All persons aiding, abetting or encouraging a prize-fight are liable as principals, even in the case of a fatal result. But the mere act of being present as a spectator, although perhaps indirectly an encouragement to the combatants, is not criminally punishable; *R. v. Coney*, C. C. R. Mar. 1882, 51 L. J. M. C. 66; 8 Q. B. D. 534. Railway companies

dates, saw-dust, &c., intended to be consumed as ‘coffee,’ or any mixture of such substances with coffee or chicory, is now liable to a special duty; and no such article may be sold or kept for sale except in packets containing one or more quarter pounds, with a label declaring the exact ingredients, under a penalty of £20: ‘Customs and Inland Revenue Act, 1882’ (45-6 Vict. c. 41), secs. 5, 6.

providing or stopping trains for the purpose are subject to a penalty of not less than £200, nor more than £500, recoverable before two Justices—half to the informer (31-2 Vict. c. 119, s. 21); and a prize-fight fought in gloves has been held just as illegal as a battle decided with naked fists. Every deliberate challenge or provocation to fight is an indictable misdemeanour; but, in ordinary cases, a Justice will probably content himself with binding over the sender, and perhaps the receiver also. It should be understood, moreover, that to *carry* a challenge is just as much an offence as to send one. See ASSAULT, ARREST and RIOT.

AGENTS. Any banker, merchant, broker, attorney, or other agent, entrusted, either solely or jointly, with any money or security, with any *direction in writing* to pay or apply the same to or for any particular person or purpose, who shall, in violation of good faith and contrary to such direction, convert the property to his own use:

Or, who being entrusted with any chattel, valuable security, or power of attorney, for safe custody or any special purpose, without authority to sell, &c., shall in violation of good faith and contrary to the purpose for which such property was entrusted to him, sell, negotiate, or convert the same, or the share or interest to which such power of attorney shall relate, to his own use, is guilty of a misdemeanour, (24-5 Vict. c. 96, s. 75). [Penal Serv. 5—7 years; or impr. 2 y.] Not triable at sessions. Bail ‘discretionary.’

See also section 76, and *R. v. Newman*, 51 L. J. M. C. 87; and, as to Factors entrusted with goods for sale, section 78.

AGREEMENT. The law does not require that a simple contract should in every case be reduced into writing; and, where this point is not insisted upon, a mere verbal agreement or promise is binding. But if an agreement be once put into writing, although in its nature it might equally well have been made by words only, no verbal evidence is admissible

to add to, vary, or contradict the terms which the parties have placed upon paper. 'Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est.' Verbal evidence, however, as implied in this maxim, is always admissible to explain what has been actually written. This is only common sense; since otherwise the terms of an agreement might be quite unintelligible to a third party.

Not only may technical expressions and the language of business be thus interpreted, but evidence of custom and usage is generally admissible in construing an agreement. This is a tacit annexation of terms which it may be supposed that the parties understood and intended should form part of their bargain.

Finally it is competent to the parties, by mutual consent, to vary or abandon the original agreement and make a new one. It is open to either party to show if he can, that the agreement upon which the other insists is not the existing agreement at the time when it is sought to be enforced.

Under the Statute of Frauds, a written document signed by the party to be charged, or his agent, is made essential in the following cases:—

1. Where the agreement binds one man to answer for the debt or default of another.

2. Where it amounts to a contract or sale of land, or any interest in land: except in the case of leases not exceeding three years.

3. Where it appears upon the face of it that it is not to be completely performed within one year. A contract, however, which *prima facie*, and from its terms, may be performed within a year, is not touched by the Act; although its actual performance may be extremely improbable, and the parties themselves may have expected its endurance beyond that period. See *Davey v. Shannon*, Exch. Mar. 31, 1879; 40 L. T. N. S. 629.

4. Where it is for the sale of goods, for the price of £10

or upwards; *unless* the buyer either receive part of the goods, or give something to bind the bargain or in part payment.

Stamps.—When an agreement is reduced into writing, whether formally, or in the course of correspondence, it is frequently necessary that it should bear a stamp, before it can be received as evidence in a civil court: (see 33-4 Vict. c. 97). In the case of ordinary agreements, a sixpenny adhesive stamp ‘cancelled by the person by whom the agreement is first executed,’ (sec. 36) or an impressed stamp of the same value, which will be affixed, within fourteen days of its date, upon application at any Stamp Office, is sufficient. But no stamp is requisite

- (a) When the subject matter is under £5 in value;
- (b) When it is for the hire of any labourer, artificer, or menial servant;
- (c) When it relates merely to the sale of goods.

A stamp may generally be affixed to a previously unstamped document *when tendered in evidence*, on payment of a prescribed penalty.

In criminal cases, or cases of a criminal nature (see page 42) the want of a stamp forms no objection to the admissibility of any document.

No instrument is to be deemed duly stamped with an adhesive stamp unless the person bound to cancel such stamp does so by writing *on or across the stamp* his name or initials, and the date of such writing; *or* unless it be otherwise proved that the stamp was affixed at the proper time (sec. 34). The ordinary penny receipt stamp, it may be noticed, should be cancelled by the person by whom the receipt is given, before he delivers it out of his hands. An unstamped receipt may be stamped with an impressed stamp afterwards, on payment of a penalty; but not after one month. Consequently it cannot then be made evidence in any *civil* proceeding. Penalty for giving a receipt without stamp, or refusing to give a stamped receipt, or dividing

the amount paid, to evade duty, £10, recoverable in the Exchequer (secs. 121-3).

ALIENS. An alien born could not formerly hold landed property in this kingdom. He might purchase it indeed, but the Crown became entitled to it; which Blackstone considered to be no more than reasonable punishment for his presumption. By the 'Naturalization Act, 1870,' real and personal property may now be held by an alien in all respects as by a born British subject. This, however, does not qualify him for any office, or for any municipal, parliamentary, or other franchise. For these purposes, a certificate of naturalization must be obtained from the Secretary of State. An alien is no longer triable by a jury *de medietate linguæ*, but in the same manner as a native; and may serve as a juryman himself, after a ten years' domicile in this country.

As to aliens enlisting in the regular forces, see Army Act, 1881, sec. 95.

APPEAL.—The privilege of an Appeal to Quarter Sessions from the decision of a court of summary jurisdiction is by no means plain matter of right, of which anybody who finds or fancies himself aggrieved may avail himself at pleasure. As regards criminal matters, in the first place—*i.e.*, those in which the process is by information proper (see pages 42—3)—the general rule is that appeal will only lie against a *conviction*, and not against the dismissal of a charge. *Nemo bis vexari debet pro eadem causa*; and when once Justices have decided, upon the facts before them, that the accused is not guilty, the prosecutor must rest content, and consider the matter at an end. There is an exception to this rule in Inland Revenue cases, and in some few other instances (see page 141).

Again, as a general rule, there is no right of appeal unless such be specially conferred by the statute under which the

conviction takes place. But by the Summary Jurisdiction Act, 1879 (sec. 19), the privilege has been extended to *all cases* (other than those dealt with under the Act itself) in which any person, not pleading guilty, is adjudged by the conviction or order of a court of summary jurisdiction **to be imprisoned without the option of a fine**. The imprisonment, however, must not have been the mere alternative of failure to comply with an order for the payment of money, finding of sureties, entering into any recognizance, or giving security.

In every statute containing an appeal clause, provision used formerly to be made as to the conditions under which such right was to be exercised in that particular case. The time within which the appeal was to be prosecuted, the amount of notice to be given, the securities into which the intending appellant was required to enter, &c., were all made matter of special and elaborate enactment. Under the appeal clauses of the above Act, however (secs. 31, 32), coupled with the Summary Jurisdiction Act, 1884, sec. 6, a person authorised by any Act passed before 1880, and practically by any later or future Act, to appeal to General or Quarter Sessions from the conviction or order of a court of summary jurisdiction made under the Summary Jurisdiction Acts, or from a refusal to make such conviction, &c., must appeal to such court, subject to the conditions and regulations following :—

1. The appeal must be made to the prescribed Court of General or Quarter Sessions, or, if no court be prescribed, to the next practicable court having jurisdiction, &c., and holden in any case not less than fifteen days after the decision upon which the conviction or order was founded.

2. The appellant must, within the prescribed time, or, if no time be prescribed, within seven days after such decision, serve on the other party, and on the clerk of the Justices, notice in writing of his intention to appeal, and of the general grounds of such appeal.

3. The appellant must, within the prescribed time, or, if no time be prescribed, within three days after giving notice, enter into such recognisance as the Justices may direct, conditioned to appear and try the appeal, abide the result, and pay such costs as may be awarded; or he may, by permission, give security by deposit of money.

4. Where the appellant is in custody, the Justices, should they think fit, on his entering into such recognisance or giving such security, may release him from custody.

5. The Court of Appeal may confirm, reverse, or modify the decision appealed from, or may remit the matter with its opinion thereon, or make such other order as it may think right; and such order will have the same effect, and be enforced in the same manner, as if it had been made by the court of summary jurisdiction. It may also make such order as to costs as may be just.

The 'prescribed times' referred to in the above conditions are of course those mentioned in each particular Act authorizing appeal. But most of the appeal clauses appended to existing statutes have been swept bare of their special provisions, as explained at page 56. If, however, we are at last to place matters upon a perpetual basis, such words as 'the prescribed time,' &c., should surely have been rendered needless altogether, even at the cost of a more daring policy.

In the above conditions, it will be observed that the appellant is bound to state in his notice the grounds upon which he intends to rely. Care should be taken to state them with accuracy, as he will not, at the hearing, be permitted to go into or give evidence as to any other. Neither party, however, is obliged to confine himself before a Court of Appeal to the *evidence* which he adduced before the Justices below, and may bring forward any additional testimony in his power. After an appeal against any conviction or order has been decided adversely to an appellant, the Justices who made the same may issue their

warrant of commitment or distress, precisely as if no appeal had been brought.

Under the 12 & 13 Vict. c. 45, if at any time after notice of appeal has been given, both parties agree to take the opinion of the Queen's Bench Division upon the matter, as embodied in a Special Case, in preference to going to Quarter Sessions, they are at liberty to do so. This privilege does not extend to matters in Bastardy, nor to proceedings in relation to the Excise or Customs.

Nota bene.—Whenever, throughout this volume, it is stated that there is a right of **appeal** from any particular statute, and reference is made to this page, it may be assumed that it is to the next practicable Court of Appeal, holden not less than fifteen days from the conviction, &c., subject to the above conditions, and bound by no 'prescribed times.'

STATING CASE FOR SUPERIOR COURT.

'Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to such court to state a **Special Case**, setting forth the facts of the case and the grounds upon which the proceeding is questioned; and, if the Court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated' (Summary Jurisdiction Act, 1879, sec. 33, incorporating and extending the provisions of 20-1 Vict. c. 43).

This proceeding is wholly irrespective of any right to appeal under the statute giving cognisance of the matter. On the other hand, either party, by adopting it, abandons any privilege of appeal which he might otherwise have enjoyed.

Either side then, within seven days after such hearing, may apply in writing to the Justices to state and sign a Case within three months, setting forth the facts and grounds of

their determination for the opinion of the High Court. Such party must, within three days after receiving the Case, transmit the same to the High Court, first giving written notice of his appeal, and furnishing a copy of the Case to the respondent.

The appellant, upon applying for a Case, must enter into a recognisance to prosecute his appeal, to submit to the judgment of the High Court, and to pay any costs awarded. He may then, if in custody, be at once liberated.

It is for the Justices to 'state the Case,' and neither of the contending parties has any right to object to their manner of doing so. In practice, it is usually drawn up by their clerk, who is entitled to a fee for his trouble.

Should the Justices be of opinion that the application is merely frivolous, they may refuse to state a Case. They are entitled and expected to use their own judgment in this respect, and not to comply unless some point of law has been raised which seems fit to be discussed in a Superior Court. The intending appellant may however apply for a rule to compel them to do so, should there be no sufficient ground for their refusal.

The Court above will ultimately hear and determine the question in dispute, dealing with the whole matter as it may think fit. Their decision may be enforced by the Justices who pronounced the original order, in the same manner as they might have enforced the latter had it not been appealed against. The question, however, we repeat, must be one of *law*; and Judges will not, under this form of appeal, entertain any suggestion that Justices have erroneously decided a question of *fact*.

CERTIORARI.

The Court of Queen's Bench (*a*), whose Justices 'a latere

(*a*) Now represented by the Queen's Bench Division. Under the Judicature Act, 1873, the three courts of Queen's Bench, Common Pleas and Exchequer were constituted so many Divisions of the High

regis residentes omnium aliorum corrigere tenentur injurias et errores,' exercises a sovereign jurisdiction over the proceedings of all inferior tribunals. Its interference, when called for, is through the medium of its writ of Certiorari, commanding them in the Queen's name to certify or return the proceedings in any judicial matter pending before them, to the end that such further may be done therein as of right and according to the law and custom of England may be fit. A writ of Certiorari issues as a matter of course upon the application of the Attorney General. In other cases, the Court may grant or withhold it at their pleasure.

No such special enactment as is necessary to entitle a party to appeal to Quarter Sessions is needed to enable him to invoke this transcendent jurisdiction. Even where it is expressly declared by the statute creating an offence that no conviction under it shall be removed by Certiorari into a Superior Court, the person aggrieved may still make his application, if there has been a manifest want of jurisdiction, or if the bench were illegally constituted.

The object of applying for a writ of Certiorari, so far as relates to matters with which we are now concerned, is to cause a conviction or order of Justices to be removed into the Queen's Bench for the purpose of showing that the case was not one in which the Justices had jurisdiction to do the act complained of. If it appear upon the face of the conviction or order that the Justices had in fact jurisdiction, the Court will not inquire further into the case. Their function is not to review the decision which has been come to, but to pronounce whether or no the Justices were warranted in entering upon the matter at all. A Certiorari must be moved for within six months after the date of the conviction or order, and six days' previous notice of the application must

Court of Justice. And by an order in Council dated the 16th of Dec. 1880, these three Divisions were reduced, by the consolidation and union of the Judges attached to them respectively into one Division known as that of the Queen's Bench.

be given to the Justices by whom such was made. Upon the issue of the Certiorari it will in due course be delivered to the Justices, who will append to it the conviction or order in question, or a copy, if the original has been returned to Sessions (see p. 15). Should the judgment of the Court be against the Justices, their conviction or order will be quashed. Otherwise it will be returned to them by writ of *Procedendo*, in order that they may duly carry it into execution.

MANDAMUS.

This is another writ, issuing out of the same high Court, commanding the performance of a public duty by the person or persons to whom such has been entrusted. Justices of the Peace, whose office it is 'to do right to all manner of people after the laws and usages of the realm,' may not decline to enter upon any matter properly brought before them, but are compellable to undertake the task, and to discharge it to the best of their ability. To this extent, and no further, the Court will go. The writ issues upon the assumption that, either through perverseness or indifference, they are denying right to some person who is in a position to demand it, and who has brought the matter properly before them. It must therefore be shown, first, that they had jurisdiction, and that there was no reasonable excuse for their declining to act; secondly, that in point of fact they did so decline. Should it turn out that the complaint is not that they declined to act, but that a decision which they had authority to make is the real matter complained of, the Court will not interfere, or inquire whether such decision was right or wrong.

It is obvious, however, that the course adopted may have been merely a negative one—a refusal for their own reasons to take steps of a particular kind. And the very gist of the inquiry often is whether they had any discretion in this respect. It must not be assumed that where a statute enacts that 'it shall be lawful for Justices'

to do so and so, or provides that they may take a particular step 'if they shall think fit,' it is necessarily intended that they should consult merely their own inclination in the matter. Such phrases, it has been said, are part of the courtesy of Parliament when dealing with Courts of Justice, and when it is declared that it shall be lawful for them to do a certain thing, it is a gracious way of saying that it shall be unlawful for them to do anything else (*Ex parte Neath Railway*, 43 L. J. Ch. 278). Justices are not perhaps justified in assuming that this exalted and overwhelming politeness is always observed in communications addressed to themselves.

The true principle of the matter was lucidly explained by Lord Cairns, in *Julius v. The Bishop of Oxford*, Mar. 23, 1880, L. R. 5 App. 214. 'The words, "it shall be lawful," or their equivalent, are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and do not of themselves do more. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person for whose benefit the power is to be exercised, *which may couple the power with a duty*, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. Whether the power is one coupled with such a duty, is a question which, speaking generally, it falls to the Court of Queen's Bench to decide, upon an application for a Mandamus. And the words "it shall be lawful" being, according to their natural meaning, permissive or enabling only, it lies upon those who contend that the power, in any particular instance, is so coupled, to show, in the circumstances of the case, something which creates this obligation.'

A Mandamus will not issue in cases where there is by

statute an appeal to Quarter Sessions. Otherwise, it may be obtained upon the application of any party to proceedings, supported by proper affidavits, and is served upon the Justices and other parties.

Justices may either await the issue of the proceedings between the parties, or if they consider themselves bound to interpose, by informing the Court of the grounds of their decision, and of the material facts bearing upon the same, they may do so, without expense, under the provisions of the 'Review of Justices' Decisions Act,' 35-6 Vict. c. 25.

APPRENTICES. Justices are expected to interest themselves in various ways with respect to apprentices, both parish-bound and otherwise. The points, perhaps, which most frequently claim their attention are in connection with the settlement of disputes between these persons and their masters. The 'Employers and Workmen Act,' 38-9 Vict. c. 90, enacts that any dispute incidental to such relationship may be determined by a Court of Summary Jurisdiction. Apprentices, however, to come within the meaning of the Act, must be apprenticed to [learn] the business of a *workman* (for definition see EMPLOYERS AND WORKMEN), and not to trades in which manual labour, *ejusdem generis* with that of 'a workman,' forms no part of the duty; as in the case of grocers, haberdashers, &c. Moreover, the Act does not apply in any case where a premium exceeding £25 has been paid.

The Court (sec. 6) has the same powers as if the dispute were between an employer and his workman, and the instrument of apprenticeship the contract; (for procedure see EMPLOYERS, &c.), and it has further authority—(i) to direct the apprentice to perform his duty upon pain of imprisonment; and (ii) to order, in the event of its rescinding the indentures, that the whole or any part of the premium be returned. As regards the order which may be made against the surety of the apprentice, if any, and the acceptance of security in lieu of punishment, see sec. 7.

A master is bound to provide medical attendance for his apprentice, in which respect the latter has the advantage over a mere servant, and is liable to a penalty of £20, or to six months' hard labour, in cases where being legally liable to provide food, clothing, medical aid, or lodging, he wilfully, and without lawful excuse, neglects his duty in this respect, whereby the health of the apprentice is likely to be seriously or permanently injured (38-9 Vict. c. 86, s. 6).

Apprentices enlisting.—The master of any apprentice in the United Kingdom, who was bound to him for at least four years, and was under sixteen when bound, and who has been attested as a soldier of the regular forces, may claim him, under certain circumstances, while under the age of twenty-one, but not afterwards. He must, within one month after the apprentice left his service, apply by complaint to a Court of summary jurisdiction within whose jurisdiction the apprentice may be; and the Court, if of opinion that the latter ought to be given up, may order his commanding officer to deliver him to his master. But the Court, if satisfied that the apprentice stated upon his attestation that he was not an apprentice, may try him for the false statement, and if necessary adjourn for that purpose. See Army Act, 1881, sec. 96. The clause is extended to militia recruits by the Act of 1882 (45-6 Vict. c. 49, s. 9).

ARREST. Arrests are of two kinds, namely, those which may be made off-hand, upon discovery or suspicion of an offence, and those which are made by virtue of a warrant in the ordinary course of judicial process.

Any private person (and, *a fortiori*, a constable) present when any felony is committed, or even attempted, is not only authorised but bound at Common Law to arrest the felon, on pain of fine and imprisonment if the latter escape through his negligence.

When a felony has actually been committed, and a private individual has subsequently reason to suppose that a particular

person was the offender, he may apprehend him accordingly; and such arrest will be good to all intents and purposes, even if the party turn out to be perfectly innocent. But he is under no obligation to take this step; and any one who acts as his own constable, unless with substantial reason, may divide the proverbial palm of unwisdom with the man who appears as his own counsel. A police officer enjoys the further latitude of being allowed to arrest on suspicion, not only when it is quite certain that a felony has been committed, but when he has only good reason to think so.

A constable, upon being refused admission, is justified in breaking open house-doors to arrest a felon, even when he is only acting upon suspicion; but a private individual has no such privilege, and the right does not extend to mere cases of misdemeanour, unless indeed the offender has been actually arrested and made his escape.

Generally speaking, there is no power to arrest in the first instance and without warrant for a *misdemeanour* (see title), except where this course is specially authorised by Act of Parliament. But a constable, or any private individual, may arrest for the purpose of quelling a breach of the peace (see *AFFRAY*); and a constable may clearly arrest upon the spot for any assault which *he has himself witnessed*, whether or not there be danger of further violence. Within the Metropolitan Police District, it is not necessary that he should have seen the assault, provided he has good reason to believe that it was of an aggravated nature and had been recently committed. And a Justice, according to Blackstone, 'may himself apprehend, or cause to be apprehended, by word only, any person committing a breach of the peace in his presence.' Whenever a right of this kind has been specially recognised or conferred in respect of a particular class of offence, it will be found noticed in our mention of the subject. Thus we shall see that persons guilty of certain acts of misbehaviour in the public streets, or upon railways, of drunkenness when in possession of loaded fire-arms, of cruelty to

animals, false pretences, and malicious damage, as well as offenders against the game-laws and the Pawnbrokers Act, suspected thieves, deserters, vagrants, smashers of bad money, and many others, are all liable to be summarily arrested, either by a constable or private individual as the case may be. But their apprehension must generally be *flagrante delicto*—they must be ‘found committing’ the act which renders them liable, and arrested then and there, or in the course of hot pursuit. Unless this can be done, recourse must be had to a summons or a warrant. See *Griffiths v. Taylor*, Appeal, Dec. 7, 1876; 41 J. P. 340.

Malicious Arrest—False Imprisonment.—A point of considerable practical importance arises in connection with the above. The first impulse of the average Englishman, upon finding himself robbed or molested, is at once to give somebody into custody. Now it may happen, even with the best intentions in the world, that he may have got hold of the wrong individual, or that the charge may turn out to be after all without foundation. And in these cases there is always the danger that the party arrested may retaliate by an action for false imprisonment. It is wiser, therefore, for the aggrieved person to refrain, as far as may be, from taking a leading part in the prosecution. He may complain to a constable, and mention his suspicions or belief, and even sign the charge-sheet, without rendering himself more than a mere witness in the matter. In *Darby v. Beardsley*, 43 L. T. N. S. 603, a recent case of the above description, it was held by Lopes, J., that in order to maintain such an action it was necessary that the plaintiff should prove that the defendant *was the prosecutor*, and that there was an absence of reasonable and probable cause. There was not in the books, added his lordship, any express authority as to what a ‘prosecutor’ was. He might be described as one who was actively instrumental in putting the law in force. But, in the case before the court, all that the defendant had done was to tell what he knew to the constable; and what

followed, as to the arrest and charge, was the act of the constable himself. 'It has been urged,' added Lindley, J., 'that the defendant so acted that he *intended* the plaintiff to be arrested by the constable, or, as it is said, he set the stone rolling. But what stone has he set rolling? Simply a stone of suspicion.'

Under the 'Offences against the Person Act,' 24-5 Vict. c. 100 (see ASSAULT), any person assaulting another, whether a peace-officer or otherwise, with intent to resist the lawful apprehension or detainer of himself or any other person, is guilty of a misdemeanour and liable upon indictment to two years' imprisonment with hard labour.

By section 66 of the same Act, any constable may take into custody, without warrant, any person whom he may find lying or loitering in any highway, yard, or other place 'during the night,' and whom he may have good cause to suspect of having committed, or being about to commit, any felony in that Act mentioned. And under the Larceny Act, a similar power is given in respect of contemplated offences thereby punishable. See also page 368.

An arrest which may be made without warrant may be effected on Sunday as well as on any other day, and at any hour of the day or night.

It is an indictable offence at Common Law to decline to assist a constable when in difficulties with anybody in his custody. (See a case at the Middlesex Sessions, Feb. 4, 1879; 43 J. P., 115.) Rescuing a prisoner from proper custody is of course a still graver misdemeanour. If in charge of a private individual, the latter should warn an attempting rescuer of the cause for which he holds his prisoner. In the case of a police constable, all persons interfere at their peril. If the constable be in plain clothes, he should show his staff, which has been held to be sufficient notice of his authority. All persons are bound to submit to legal arrest. And a constable's right to secure and retain his prisoner extends to killing a felon in self-

defence, and even, it is said, if necessary to prevent his escape; but he certainly would not be justified in proceeding to an such extremity in the case of a mere misdemeanant.

A constable has no right to handcuff an arrested person, unless this precaution is obviously called for under the circumstances. The right of searching him is not expressly given by any enactment of general application; but it is universally admitted and acted upon, as a precaution warranted by Common Law and recognised by various statutes. See CONSTABLES.

Arrest under warrant is a more formal and deliberate affair. The officer proceeds at his leisure, selecting his own opportunity, and armed with an authority which ought at once to insure obedience. It is essential that the warrant itself should be actually in his possession, as otherwise the accused, not being 'found offending' is under no obligation to surrender, and is entitled to treat his intending captor as an enemy: *Punshon v. Leslie*, Q. B., Mar. 1879; 43 J. P. 605. Where the charge is one of felony, he would no doubt resist at his peril; but, even then, the constable would be indebted for protection, not to his forgotten warrant, but to his antecedent authority at Common Law.

It is not necessary that the person arrested should be actually touched or seized, provided he distinctly submit to consider himself in custody. Care should, however, be taken that the arrest is complete in this respect, in case of subsequent escape.

A constable may break open house-doors and, *à fortiori*, all inner ones in the performance of this part of his duty, at all events where the charge is one of felony, or of a misdemeanour involving breach of the peace. But he should first demand admission in any case, and certainly where the offence is only a misdemeanour, stating the nature of his errand. It seems doubtful, however, whether the doors of a stranger may be forced, upon the mere ground of the offender

being within, unless he be an actual inmate or resident in the house.

A warrant for the apprehension of a person charged with an indictable offence may be executed on a Sunday. But no ordinary warrant can be issued or executed upon that day, unless in the matter of a breach or apprehended breach of the peace. An arrest under warrant may no doubt be made in the night, but the entering a house, at such a time, for this purpose is open to grave and obvious objections, except in cases of extreme emergency.

ARSENIC. The indiscriminate sale of this poison, including arsenious acid, &c., is guarded against by the 14 & 15 Vict. c. 13, which however offers no pecuniary inducement to the informer. Every person retailing Arsenic is bound to enter in a book the quantity sold—the purpose for which required—date of sale—and name, &c., of the purchaser. He must not sell to a person unknown, unless in the presence of a mutual acquaintance signing his name to the entry before delivery; nor to anybody under 21. He must mix what he does sell with soot or indigo, unless the purchaser require it clean, in which case he must be content to carry off and pay for not less than 10 lb. of it. A general penalty of £20 attaches to all offences, whether committed by vendor, witness, or purchaser; recoverable by distress, for the benefit of the county, before two Justices without appeal.

ARSON. The offence of ‘unlawfully and maliciously’ setting fire to—and, in some instances, of attempting to set fire to—any of the following descriptions of property, is felony under the 24-5 Vict. c. 97.

By the words ‘unlawfully and maliciously’ it is not intended that the offence need necessarily be committed through any *actual malice* ‘conceived against the owner of the property or otherwise’ (see sec. 58). The law will infer malice from the perpetration of a wilful or wanton act of

mischief. And it is neither necessary to charge in the indictment, nor to prove at the trial, an intent to injure or defraud any person in particular (sec. 60).

The following offences (except perhaps 6, 7 and 8) are not triable at Sessions. Bail in every case 'discretionary.' Whipping may always be ordered, in addition to imprisonment, when the delinquent is a male under sixteen. The numbers below correspond with the sections of the Act.

1. Church, or place of divine worship, [Pen. S. 5 y.—Life: or impr. 2 y.]
2. Dwelling-house, any person being therein, [same.]
3. House, stable, outhouse, warehouse, shop, mill, barn, shed, &c., building used for farming purposes, or in carrying on any trade, manufacture, &c. (whether in the possession of the offender, or of any other person), with intent thereby to injure or defraud any person, [same.]
4. Railway station, &c.—dock or harbour buildings, [same.]
5. Public building of any description, [same.]
6. Any building other than as above mentioned, [Pen. S. 5—14 y.; or impr. 2 y.]
7. Any matter or thing in, against, or under any building, under such circumstances that if the building took fire the offence would amount to felony, [same.]
8. By any overt act, attempting to set fire to any building, or attempting last offence, [same.]
16. Crop of hay, grain, &c., or any cultivated vegetable produce, standing or cut; or any part of any wood, coppice, or plantation; or any heath, gorse, furze, or fern, wherever growing, [same.]
17. Stack of corn, grain, hay, straw, &c., or of any cultivated vegetable produce, or of furze, turf, coal, charcoal, wood, bark, &c., [Pen. S. 5 y.—Life; or impr. 2 y.]
18. By any overt act, attempting offences 16, or 17, [Pen. S. 5—7 y.; or impr. 2 y.]

26. Coal-mine, &c. [Pen. S. 5 y.—Life ; or impr. 2 y.]
 42. Any ship or vessel, whether complete or unfinished,
 [same.]
 44. By any overt act, attempting last offence, [Pen. S. 5—
 14 y. or impr. 2 y.]
 (12 Geo. III. c. 24 and 69.) Setting fire to any of H. M.
 vessels of war ; or to vessels in dock, [Death.]

ASSAULT. An assault (*insultus*) is properly an offer of violence to another without touching him. The least unauthorised and undue touching is a 'battery'—every man's person being sacred, and nobody, according to the old surly rule, having the right to meddle with it in the slightest degree. The distinction however is now obsolete, or rather the former term has been employed even in Acts of Parliament to include the latter, and when we speak of an assault we mean an act of personal molestation cognisable by law. It would be needless for present purposes to attempt to lay down the line within which acts of this description become punishable. In the vast majority of cases, the question is one which may be solved by common sense. The act need not necessarily be a hostile one. A kiss, if unwelcome, is as much an assault as a cuff. Neither need one party actually touch the other. It is an assault to strike the horse upon which a person is riding ; to throw a stone, or set a dog at him. It is scarcely necessary to observe that an assault may be justified, not only where it is committed in pursuance of some duty imposed, or some right conferred, by law (see, for example, under FISHING), but where it is directed against an original and forcible aggressor, in defence either of a man's person or his possessions. And this right of self-protection has even been conceded in the case of a man who resisted with violence the attempt of a constable to arrest him upon a warrant without having that document in his possession at the time. See also *R. v. Cumpston*, C. C. R. Mar. 6, 1880, 5 Q. B. D. 341, and *Punshon v. Leslie*, ante, page 83, where the

constable attempted to arrest, without a warrant, a person not 'found offending.' Mere *words* however must in no case be resented by blows; neither must the right of appealing to force be made an excuse for employing it *ad libitum*. A man need not delay to strike till he is actually struck, but, generally speaking, resistance should take the form of 'a word and a blow,' of which the word should come first and the blow not be harder than necessary.

Assaults in general are dealt with under the 24-5 Vict. c. 100. They are of two classes, viz. :—those which may be punished in a summary manner, and those of a more serious description, which are matter of indictment. As regards those which are *prima facie* within the summary jurisdiction, it is provided (sec. 46), that in case Justices shall find the assault to have been accompanied by an attempt to commit felony, or shall be of opinion that it is, from other circumstances, a fit subject for prosecution by indictment, they shall abstain from adjudication and commit for trial. But they are themselves the judges of the fact. Thus in the case of an assault which, according to the evidence, was suspiciously like an attempted rape, the Justices, in the exercise of their discretion, convicted the prisoner of an aggravated assault, instead of committing him upon the more serious charge: and they were supported by the Exchequer Division. Upon an attempt to quash the conviction upon the ground that the charge, if anything, was a charge of rape, Cleasby, B. said, 'We do not hear appeals from Justices on questions of fact. It is said that the evidence tended to show that a rape, *if anything*, had been committed or attempted. The Justices, however, who heard all the evidence, considered that there was not sufficient to convict the prisoner of that offence. They convicted him of an aggravated assault, and they have acted within their jurisdiction.' *Re Dawson*, May 14, 1878; 42 J. P. 456.

'An indictment for assault,' says Blackstone, 'may be brought as well as an action; and frequently both are

accordingly prosecuted; the one at the suit of the crown for the crime against the public, the other at the suit of the party injured, to make him a reparation in damages.' By the Act, however, of which we have been speaking (sec. 44, 45), if the Justices upon the summary hearing, on the merits, of any case falling within Offences 1 and 2 below, shall deem the charge not proved, or shall find the assault to have been justified, or too trifling for punishment, and shall accordingly dismiss the complaint, they are to deliver a certificate of such dismissal to the defendant. And if any person shall have obtained such certificate, or, having been convicted, shall have paid his fine or undergone his imprisonment, he is to be released from all further or other proceeding, *civil* or *criminal*, for the same cause.

By the same Act (sec. 46), it is further provided that no Justices shall hear any case of assault in which any question shall arise as to the title to any lands, &c.—see *White v. Fox*, C. P. Feb. 27, 1880, 49 L. J. M. C. 60, and PRACTICE, (13). And they cannot convict a defendant upon the ground that more violence was used than could possibly have been necessary. But they are at liberty to commit for trial, see page 87.

SUMMARY JURISDICTION IN ASSAULT.

[See, if necessary, note on Summary Jurisdiction.]

The following offences may be dealt with by two Justices. The court must not, by cumulative sentences of imprisonment (other than for default of finding sureties) to take effect in respect of several assaults committed on the same occasion, impose imprisonment for more than six months. Sum. Juris. Act, sec. 18. Hard labour (if ordered) in all cases.

1. (24-5 Vict. c. 100, s. 42). **Common Assault** [2 months; or £5, including costs, with imprisonment as per scale (page 22) in default.] No appeal, unless imprisonment ordered. As to calling upon the defendant to

enter into recognisances to keep the peace, in addition to this punishment, see page 436.

2. (*Ib.* sec. 43). **Aggravated Assault.**—Assault upon male child, whose age shall not, in the opinion of the Justices, exceed fourteen years, or upon any female—either upon the complaint of the party aggrieved or otherwise—if of such an aggravated nature that it cannot, in the opinion of the Justices, be sufficiently punished as a common assault, [6 months; or £20, including costs, with imprisonment as above in default.]

The defendant may be further bound, with sureties, to keep the peace for not exceeding six calendar months from the expiration of his sentence.

3. (34-5 Vict. c. 112, s. 12). **Assaulting any police constable** when in the execution of his duty, [£20, or (in the discretion of the court), 6 months. If second offence within two years, 9 m.]

See *infra*, Offence 15, for punishment where the assault is treated as indictable, and the offender committed for trial, and, for *resisting* constables, page 133.

INDICTABLE ASSAULTS.

The following offences are punishable upon indictment, either at Common Law or under 24-5 Vict. c. 100. Those marked 8, 10, 11, 12, 13, 16 and 17 are felonies, and except 13, only triable at Assizes. All the others are misdemeanours and triable at Sessions. Bail 'discretionary.'

4. Common assault, where the accused is committed for trial Misdemeanour at Common Law, [one year.]
5. (Sec. 47). Any assault occasioning actual bodily harm, [Pen. S. 5 y., or impr. 2 y.]
6. (Sec. 52.) Indecent assault on any female, (bail 'compulsory'), [2 y.] See CHILDREN, page 119.
7. (Sec. 62). Indecent assault on any male, [Pen. S. 5—10 y., or impr. 2 y.]

8. (Sec. 18). Maliciously wounding, or causing grievous bodily harm, or discharging or attempting to discharge loaded arms, *with intent* in any of the above cases to maim, disfigure, or disable, or do other grievous bodily harm, or to resist lawful apprehension. [Pen. S. 5 y.—Life; or impr. 2 y.]
9. (Sec. 20). Maliciously wounding, or inflicting grievous bodily harm, either with or without weapon or instrument, [Pen. S. 5 y., or impr. 2 y.] A conviction under this section was affirmed where the accused had apparently ‘for fun’ turned off the gas upon the staircase of the Leeds Theatre, and obstructed the door of exit with an iron bar; *R. v. Martin*, Nov. 1881, 8 Q. B. D. 54; 51 L. J. M. C. 36.
10. (Sec. 21). Attempting to choke, suffocate, or strangle, or to render any person insensible or incapable of resistance, with intent to commit, or to enable another to commit, an indictable offence, [Pen. S. 5 y.—Life; or impr. 2 y. and whipping, 26-7 Vict. c. 44.]
11. (Sec. 28). Maliciously, by any explosive, burning, maiming, &c., or doing any grievous bodily harm, or
12. (Sec. 29). Causing gunpowder, &c., to explode—or sending or delivering, or causing to be taken by any person, any explosive substance, or dangerous or noxious thing, or putting or laying at any place, or throwing at or applying to any person, any corrosive fluid, or destructive or explosive substance, with intent to burn, maim, &c., whether any bodily injury be done or no, [Pen. S. 5 y.—Life; or impr. 2 y. with whipping, if a male under sixteen.]
13. (Sec. 30). Maliciously placing or throwing in, into, against, or near any building or vessel, any explosive, with intent to do bodily injury to any person, whether or not explosion take place or bodily injury be done, [Pen. S. 5—14 y.; or impr. 2 y., with whipping as above.]

14. (Sec. 38). Assault with intent to commit felony, [Impr. 2 y.—also fine and sureties of the peace.]
15. (*Ib.*) Assaulting, resisting, or wilfully obstructing any police-officer in the execution of his duty; or any person acting in aid of such officer; or assaulting any person with intent to resist lawful apprehension, [same punishment.]
16. (24-5 Vict. c. 96, s. 42). Assaulting with intent to rob, [Pen. S. 5 y.; or impr. 2 y.]
17. (*Ib.* sec. 43). Being armed with offensive weapon, robbing, or assaulting with intent to rob, any person; or, in company with one or more, robbing or assaulting with intent to rob; or robbing and, at the time of robbery, wounding, beating, or using other personal violence, [Pen. S. 5 y.—Life; or impr. 2 y. and whipping.]

ATTEMPTING CRIME. See MISDEMEANOUR. The attempt to commit an indictable offence is in certain cases made specially punishable by statute: see pages 39, 90, 119, 327, &c. Under the 14-15 Vict. c. 100, s. 9, if, on the trial of any person charged with felony or misdemeanour, it shall appear in evidence that the defendant did not *complete* the offence alleged, he is not to be thereupon acquitted, but may be found guilty of the *attempt*, and punished as if he had been convicted of the actual offence.

There is no penalty for simply attempting a non-indictable offence (see page 7), as by shooting *at* a dog, or wantonly pulling a door-bell without making it ring.

BAIL. The word is derived from the old French *bailler*, because a prisoner is bailed or delivered to his sureties; and is supposed to continue in their friendly custody, instead of going to gaol. For the general nature of the security, see RECOGNISANCE.

Previously to the committal for trial of a person accused

of an indictable offence, any Justice may as we have seen (Prelim. Notes, page 26), remand him when necessary, pending the course of the preliminary inquiry. And, instead of detaining him in custody while under remand, the Justice may, should he think fit, allow him to go at liberty 'upon his entering into a recognisance, with or without a surety or sureties, at the discretion of such Justice, conditioned for his appearance at the time and place appointed for the continuance of such examination' (11 & 12 Vict. c. 42, s. 21). During this early stage of the proceedings, the discretion of the Justice is entirely unfettered; but it is not usual to allow bail in cases in which a prisoner would not be *entitled* to this indulgence *after* being committed for trial, a point which will be considered presently.

Should a subsequent remand become necessary, the sureties, if any, must attend the court, and the previous formalities will have to be repeated; since bail cannot be taken, once for all, for the appearance of a prisoner from time to time.

But, when once an accused person has been actually committed for trial, the aspect of the bail question becomes altered. It is no longer competent to the Justice, in any case, to allow the prisoner to go at large *without one or more sureties* for his re-appearance. He may still, as regards certain specified offences, admit or decline bail, according to his own judgment; but, as regards others, if adequate bail be tendered, he is bound to accept it. In the one case bail is said to be 'discretionary,' in the other 'compulsory.'

Discretionary Bail.—When any person is brought before a Justice upon any charge of felony, or of assault with intent to commit felony, or of the misdemeanours of obtaining property by false pretences—perjury—concealing birth—indecent exposure of person—assaulting the police—or the unlawful abuse or abduction of a young girl, and some few others, the committing Justice may, *in his discretion*, admit him to bail, upon his procuring and producing (in

addition to his personal security) such surety or sureties as, in the opinion of the Justice, will be sufficient to ensure his appearance for trial (*ib.* sec. 23, and 14-5 Vict. c. 55).

The committing Justice may admit the accused to bail at any time after his commitment, previously to the commencement of the session at which he is to be tried. Or, should he be of opinion that he is entitled to be allowed bail, he may certify as much on the back of the commitment-warrant, stating the amount which he considers ought to be accepted; and any Justice attending or being at the prison where the accused is in custody, may admit him to bail accordingly.

Compulsory Bail.—When any person is brought before a Justice charged with any indictable misdemeanour, other than those above named, such Justice, after taking the examination, *is bound*, instead of committing him to prison, to admit him to bail, provided he can find sufficient surety. And should he have been committed to prison, in default of procuring immediate bail, any of the Visiting committee—see PRISONS—or any other Justice having jurisdiction, is equally bound, upon his application, to admit him to bail. The committing Justice must in all cases, where bail is ‘compulsory,’ certify upon the commitment warrant the amount which he considers sufficient. When any person already in prison is admitted to bail, the Justice by whom it is allowed sends to the gaoler a ‘warrant of deliverance,’ upon which the prisoner is at once liberated, if detained for no other offence.

Amount of Bail, &c.—This will of course vary according to the position in life of the person accused, the nature and possible punishment of his alleged offence, and the character of the evidence by which the charge is supported. There is no statutory prohibition against taking bail in any case (except treason); but practically such an indulgence is often, for obvious reasons, out of the question. The sum named should be such as will probably secure the attendance of the accused for trial, without on the other

hand being so excessive as to amount virtually to a denial of bail altogether, which, when the prisoner has a right to his bail, is in fact a misdemeanour upon the part of the Justice. The names of the persons tendered as sureties may be required to be furnished twenty-four hours or more in advance, in order that the prosecution may have time to make inquiry as to their circumstances. They are bound to answer upon oath as to their position and liabilities, and as to the sufficiency of their property to meet their recognisances; and it is not the practice to accept individuals who are not householders. Any question as to an alleged deprivation of the privilege of bail may be made matter of application either to the Court of Queen's Bench, or to a Judge at Chambers.

A person bailed to take his trial is supposed, as has been said, to continue in the friendly custody of his sureties. They are not obliged, however, to carry friendship beyond the bounds of prudence, and may seize and take him before a Justice, or obtain a warrant for his apprehension, at any time previously to that at which he would have been bound to surrender, and thereby discharge themselves from further responsibility. The Justice will then either commit the accused to prison, or accept fresh sureties, should any volunteer to come forward.

BANKRUPTCY AND FRAUDULENT DEBTORS.

Any person adjudged bankrupt under the 'Bankruptcy Act, 1883' (46-7 Vict. c. 52), or in respect of whose estate a receiving order has been made, is liable to be indicted and punished with two years' hard labour for certain offences of a fraudulent character. He may convince the jury, if he can, that he did not mean to defraud, which will entitle him to an acquittal. And committing Justices are expressly required 'to take into consideration any evidence adduced before them tending to show that the act charged was not committed with

guilty intent.' 'Debtors' Act, 1869,' 32-3 Vict. c. 62, secs. 11, 12; and see 46-7 Vict. c. 52, sec. 163.

The offence is in many cases complete if committed not only *after* the presentation of a bankruptcy petition, but within four months *previously* to that event. This is the result where a person so situated quits England and takes with him, or prepares to quit England and take with him, any property to the amount of £20 which ought to be divided among his creditors, 32-3 Vict. c. 62, sec. 12.

By the previous section, almost every conceivable act of concealment or dishonesty by a person in the above predicament, with reference to his property, affairs, or accounts, is made similarly punishable. On the other hand (sec. 14) any creditor wilfully making any false claim or statement is liable to one year's hard labour.

It is provided, by section 13, that *any person* who 'in incurring any debt or liability has obtained credit under false pretences, or by means of any other fraud'—or who has, with intent to defraud his creditors, made any gift, transfer of, or charge upon his property, shall be liable, upon indictment, to one year's hard labour.

The above offences are triable at Sessions. Bail 'discretionary,' where prosecution ordered by Bankruptcy court.

BASTARDY. The 'Bastardy Laws Amendment Act, 1872' (35-6 Vict. c. 65), which repeals in part the 7 & 8 Vict. c. 101, and consolidates the remainder, provides for the affiliation of illegitimate children born since the 10th of August in the above year. The proceedings are not regulated by Jervis' Act, from which they are specially exempted (11 & 12 Vict. c. 43, sec. 35), except so far as concerns the backing of warrants, levying of sums ordered to be paid and imprisonment in default. The Summary Jurisdiction Act, 1879, applies to the levying of sums adjudged to be paid by an order in bastardy, and to imprisonment on non-payment, in like manner as if such order were a con-

viction on information (*i.e.*, such imprisonment will now be according to scale). It applies also to proof of service in any matter of Bastardy, and to an Appeal from any order therein.

It may be premised that no payment or arrangement made by the father of a bastard child, with a view to sheltering himself from further liability, is any bar to the jurisdiction of Justices. It is simply an element in the matter, to be taken into consideration with reference to the amount which they may think proper to award.

Application for Summons.—Any single woman, or widow, may apply to any Justice acting for the petty sessional division of the county, or for the borough or place, in which she may be resident for the time being, for a summons, to be served upon the man alleged by her to be the father of the child in respect of which she applies. A married woman not cohabiting with her husband, may upon sufficient evidence of non-access, founded upon other testimony than her own, make a similar application; but she cannot, in other cases, thus relieve her husband from the duty of maintaining her illegitimate child, whether born or begotten before their marriage; *Stacey v. Lintell*, Mar. 28, 1879; 4 Q. B. D. 291; 48 L. J. M. C. 108; and see 4 & 5 W. 4, c. 76, sec. 57 (cited Poor, page 352).

Application may be made by the woman *before* the birth of the child, in which case she must support the above allegation of paternity upon oath.

Should her application be delayed for more than a year after the birth, it will be too late, unless she be in a position to support it by a declaration upon oath that the alleged father has, during that twelvemonth, paid money towards the child's maintenance.

Should the alleged father, however, have ceased to reside in England within one year after the birth, she may apply within one year after his return.

The Summons.—The Justice to whom application is made

will thereupon issue his summons, calling upon the alleged father, wherever he may be in *England or Wales* (see *R. v. Lightfoot*, 25 L. J. N. S. M. C. 115), and any witnesses whom the woman may require (within the like limit) to appear at some petty sessions, to be held not less than six clear days afterwards, for the petty sessional division for which such Justice usually acts. When the application is made before birth, the day named should lie beyond the period at which the mother expects her child to be born; and the hearing may be adjourned, if necessary, for any period not extending beyond two months after that event. Further delay would necessitate a commencement *de novo*. If the summons be served after the child's birth, no order can be made unless applied for at petty sessions within 40 days from the time of such service. But, if applied for in due course, Justices may adjourn the case without reference to the above limit.

Proceedings in Petty Sessions.—‘After the birth of the child, on the appearance of the person summoned, or on proof that the summons was duly served on such person, or left at his last place of abode six days at least before the petty sessions, the Justices in such petty sessions shall hear the evidence of the woman, and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father; and if the evidence of the mother be corroborated in some material particular by other testimony to the satisfaction of the said Justices, they may adjudge the man to be the putative father of the said child, and may also, if they see fit, having regard to all the circumstances of the case,’ make an **order** upon him for payment to the mother of any sum not exceeding five shillings per week for the maintenance and education of the child together with, in their discretion, the expenses of its birth, (and funeral if deceased), and costs of order.

The Order.—In cases where the summons was applied for, either before the birth of the child, or within two months

afterwards, but not otherwise, the Justices are at liberty further to direct that this weekly sum shall run from the day on which the child was born. No order could be made by an English court in respect of a child born in Scotland until the 44-5 Vict. c. 24. None can be made in respect of a child born in Ireland or abroad, nor in the case of a still-born child, nor if the mother die before the hearing. Provision is made (7 & 8 Vict. c. 5) for continuing the weekly payments to a guardian, to be appointed by the Justices, in the event of the mother's death, or her incapacity through insanity, imprisonment, &c.

Such an order will cease to have any effect, except as regards the recovery of arrears, upon the death of the child; or upon its attaining the age of thirteen, unless the Justices direct in the order that payments shall continue until the child be sixteen. It will also, in the event of the death of the father, be inoperative as against his estate, except as regards arrears. The money continues payable to the mother, even should she subsequently marry (*a*).

(*a*) It has recently been contended that since on the mother's marriage her husband becomes liable to maintain the child (see page 352), there ought to be no double liability in the matter, and that consequently, so long as he is in a position to provide for it, the liability of the putative father should remain in suspense. Justices, therefore, it is argued, ought not to enforce payment of arrears which have been accrued due under their order subsequently to the date of such marriage. Whether Justices would be justified in thus quietly annulling their own order, which clearly survives the event of marriage, seems extremely doubtful. The husband is no doubt primarily liable to maintain the child, and cannot under any circumstances shelter himself under the plea that somebody else had been ordered to do so. But that is no reason why he should not be entitled to the benefit of a contribution towards that purpose, ordered before he became a husband at all. His marriage with the mother constitutes a statutory adoption of the child, and at once clears the natural father, provided that no order has been previously obtained; but if he thus adopt the child after order made, he should have the benefit as well as the liabilities attached to the step, and there seems nothing in *Stacey v. Lintell* (page 96) inconsistent with this view of the case. Indeed, if we once admit that Justices are at liberty

Plaintiff's Evidence.—As regards the proceedings at petty sessions, it will be observed that the evidence of the mother must be 'corroborated in some material particular by other testimony.' Of course if the Defendant chooses to admit the paternity, there is no need of more. Otherwise, the testimony required may consist in proof of acts of familiarity before the time when conception, according to the age of the child, must have taken place. Or it may rest upon admissions made by the alleged father to persons other than the mother; or upon letters written by him to her the terms of which leave no reasonable doubt as to what had taken place between them. The handwriting of such letters, should they not be admitted, must be proved by some third person. The payment of money for the child's support, if proved in the same manner, is also evidence from which the Justices will draw their own conclusion. If it be shown that the woman was previously of immoral character, both her own evidence and any which she may adduce, will of course be received with suspicion, and sifted with the greatest care. A woman is bound to answer as to whether she has had connection with other men than the defendant. If she deny the fact, witnesses cannot be called to contradict her, unless the question refer specially to some occasion which, from the alleged date, might have affected the paternity of the child.

Defendant's Evidence.—The defendant is himself a competent witness, and may give evidence on his own behalf, or

under any circumstances virtually to revise or revoke their order, when in their judgment it becomes unnecessary for the object in view, we open a new field of inquiry altogether. The windfall of a substantial legacy to the mother, for example, would certainly be pleaded by the putative father as a better bar than the possession of the most industrious husband. [Since the above note was written, the rights of a married mother have been judicially established; see *Hardy v. Atherton*, May, 1881, 50 L. J. M. C. 105. It may be noted that it is competent to a bench to direct, as part of their original order, that payment shall cease upon the mother's marriage; see *Pearson v. Heys*, June, 1881, 50 L. J. M. C. 124; *Williams v. Davies*, 52 *ib.* 87.]

may be compelled to do so on behalf of the mother. He cannot indeed be called upon to answer questions with no further ceremony than that of simply placing the book in his hand. He is entitled to his subpoena, if he chooses to stand upon his rights. But there is no reason why he should not be served with it then and there. It will be observed that no provision is made for enforcing his appearance, if he chooses to disregard the initiatory summons. The order is simply to be made against him in his absence. But if he be summoned as a witness, and his expenses tendered, he may be brought up on warrant, if necessary, like anybody else. The mother, in these proceedings, has a right to reply, when the defendant either calls witnesses or gives evidence upon his own behalf.

Enforcing Order.—After one calendar month from the date of the order, any Justice for the place in which the mother *may then be*, upon oath that any sum ordered has not been paid, and upon proof that the order has been personally served, may, either by summons or warrant in the first instance, cause the defendant to be brought before two Justices there, when, should he refuse to make payment of the sum due, they may and, it is submitted, 'must' (see *Davies v. Evans*, 51 L. J. M. C. 132), direct the amount with costs to be recovered by distress, and order him to be detained in custody until return be made to such warrant unless he give proper security. And if no sufficient distress can be had, the Justices may commit him to prison (without hard labour) for such period as in the opinion of the court will satisfy the justice of the case, but not exceeding in any case the maximum fixed by Scale, see page 428, unless the amount with costs be sooner paid. Such imprisonment, if undergone, will operate in satisfaction of the demand. Under the 'Summary Jurisdiction (Process) Act, 1881,' any process issued in England to enforce obedience to an order in Bastardy may be endorsed and executed in Scotland, and *vice versa*, in manner provided with respect to the process of a court of Summary Jurisdic-

tion (see page 430). A man cannot however be *summoned* from one country to the other to answer a complaint in bastardy; *R. v. Thompson*, 53 L. J. M. C. 65; confirmed on appeal, H. L. Dec. 4, 1884.

Application by Guardians.—Under the 36 Vict. c. 9 the Guardians of any union or parish to which a bastard child under thirteen becomes chargeable, may apply for a summons against the alleged father. And thereupon proceedings may be had ending in an order upon the defendant to pay to the guardians such sum, weekly or otherwise, while the child continues chargeable, as the Justices may think proper. Payment is recoverable in manner mentioned above; but no order can be made, or will continue in force, if or after the mother has obtained an order under the Act of 1872.

Appeal. Second application by Mother.—The person against whom an order is made may appeal against it to Quarter Sessions, provided he give notice to the complainant of his intention so to do within twenty-four hours (Sunday excluded) after it is pronounced, and within three days after such notice, enter into recognisances to try the appeal. The mother has no corresponding privilege. She may however make a second application in cases where the first has been dismissed for want of corroborative evidence. Such dismissal is in the nature of a nonsuit, and not necessarily a final decision. But unless she can bring forward additional and sufficient evidence, and show that upon the previous hearing the case was not really decided upon its merits, the doctrine of *res judicata* (see PRACTICE, 14) applies as in any other instance. A second application moreover is a commencement *de novo*; a fact which may have an important bearing upon the question of time: see *R. v. Thomas*, 27 J. P. 694.

It may seem at first sight a little hard that the father in these cases should have the right of appeal, while the mother has none. It was considered, perhaps, that the sympathies of the bench might be supposed to be upon her side, as probably more sinned against than sinning. Naturally, too,

their unconscious bias as ratepayers would be assumed to lean towards finding somebody bound to support a child who might otherwise become a simple addition to local burdens. Our ancestors indeed, with a real aversion to providing for other people's children, resented their illicit propagation with such ardour, that, according to an old statute cited by Blackstone, the mother was for the first offence to be committed by Justices to the House of Correction, there to be punished and set on work for one year; and, in the event of a second lapse, *until she found sureties never to offend again*. These last must have had an anxious time of it, considering the lady's antecedents, and the extreme nicety required in the supervision of her subsequent conduct.

BICYCLES. The bicycle and tricycle, whose boisterous invasion of our streets and roads was, in the first instance, so fiercely resented by nervous and old-fashioned people, are now fairly naturalized, and it only remains to control their use so far as considerations of public safety and convenience may require. The punishment for riding upon a foot-path (pp. 159, 347) should be rigorously enforced. In a recent case before Mr. Paget at Wandsworth (42 J. P. 684), the magistrate properly observed that a bicycle came within the meaning of the 2 & 3 Vict. c. 47, s. 54 (Metropolitan Police Act) just as much as a cart or a horse. The defendant was fined 40s. with costs, and ordered to pay £10 compensation (under sec. 62) to an elderly lady whom he had run down, with one month in default of distress.

It has recently been decided that a bicyclist may be convicted of furious driving under section 78 of the 'Highway Act,' *Taylor v. Goodwin*, Mar. 25, 1879, 4 Q. B. D. 228. His 'carriage,' however, was held not liable to toll under a turnpike Act, *Williams v. Ellis*, Feb. 19, 1880, 5 Q. B. D. 175. Under the 'Highway Amendment Act, 1878,' sec. 26, Justices in Quarter Sessions have power to make bye-laws for regulating their use upon main roads.

A steam tricycle (see page 242) is virtually a forbidden vehicle, unless its progress be attended by all the safeguards which solemnize the march of a 'road locomotive.'

Perambulators form no exception to the rule which excludes wheels from the footway, and the offending nursery-maid is liable to be apprehended upon the spot. But since these vehicles must either be permitted upon the pavement or virtually suppressed altogether, and as they possess a certain *raison d'être* of their own, constables are not usually expected to extend their scrutiny from the girl to her employment, and to be aware that Susan is 'driving.'

BIGAMY. 'Whosoever being married shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England, Ireland, or elsewhere,' (24-5 Vict. c. 100, s. 57). Felony. [Pen. S. 5—7 y. : or impr. 2 y.] Not triable at Sessions. Bail 'discretionary.' An offender may be committed and tried in any place, in England or Ireland, where apprehended or in custody.

Persons may be guilty of this offence, although the second marriage was void as being within the prohibited degrees; but the Act does not extend to any second marriage contracted elsewhere than in England or Ireland, by any other than a subject of Her Majesty, as illustrated in the instance below. Neither does it apply to cases in which husband or wife may have been continually absent for the preceding seven years, and not known by the other to be living during that period; proof of which knowledge lies upon the prosecution; see *R. v. Jones*, 52 L. J. M. C. 96. Nor, we need scarcely add, does it interfere with the freedom of divorced persons.

A young French gentleman, the son of a prosperous banker, came over to this country not long since for educational purposes. Through some extraordinary imprudence, he was allowed to marry his tutor's daughter. They lived together for some time, when, after the birth of a child, he deserted

her, and returned to France. There he married again. The tutor and his daughter sought him out, but were threatened with expulsion from the country, as troublesome impostors. The youth had married the latter while under 25, and his marriage was not, by French law, binding. Consequently, he had a perfect legal right, in France, to act as he did ; while he cannot be touched in England, should he ever condescend to revisit us. He has a lawful wife on both sides of the Channel.

We will cap the story of this detestable youth with another apparent paradox. A couple were married some time since, at their own parish-church, with every customary ceremony and observance. They were both of full age ; sound in body and mind ; British born subjects, and without the slightest obstacle in the way of 'kindred or affinity.' And yet they are not man and wife ; and either may marry again, at his or her pleasure, without risk of bigamy. As their ineffectual wedding will be noticed in another place, we will keep their secret until it becomes absolutely necessary to divulge it.

BILLIARDS. The keeping of a billiard or bagatelle table for public play is one of a Licensed Victualler's privileges. (See pages 260, 270.) Except in his case, an annual licence must be taken out under the Games and Wagers Act, (8 & 9 Vict. c. 109). This licence is granted by Justices, at their General Annual Licencing meeting, in the same way as an ordinary liquor licence, (35-6 Vict. c. 94, s. 75), and may be transferred in corresponding manner.

The holder is bound to print up the words 'Licensed for Billiards' conspicuously outside his premises. No exciseable liquor must be sold or consumed inside. No bad characters must be admitted ; and no play may take place before eight A.M., nor after one in the morning ; nor must the room be open upon Sundays, &c. All constables may enter a public billiard room as often as they think proper. And every keeper of such room convicted of an offence against the

tenor of his licence may be punished like a publican, under Offence (13) page 278, *i.e.*, by a fine of £10, &c.

Beer, fortunately for the frequenters of these popular haunts, although 'exciseable' since 1880, is specially emancipated in their favour. They are also at liberty to pursue their game under the festive influence of British wines, mead, and metheglin.

BIRDS' PROTECTION. Three previous Acts, for the preservation of 'sea birds,' 'wild birds,' and 'wild fowl,' respectively, were repealed by the 'Wild Birds Protection Act, 1880,' 43-4 Vict. c. 35.

Under this Act (sec. 3), any person who between the 1st of March and the 1st of August 'shall knowingly and wilfully shoot or attempt to shoot (a), or shall use any boat for the purpose of shooting or causing to be shot any wild bird, or shall use any lime, trap, snare, net, or other instrument for the purpose of taking any wild bird, or shall expose or offer for sale, or shall have in his control or possession after the 15th day of March any wild bird recently killed or taken,' is liable as follows:—

- (1) In the case of any wild bird included in the Schedule (see below) for every such bird in respect of which an offence is committed, to a penalty not exceeding £1, recoverable before two Justices by distress.
- (2) In the case of any wild bird *not* included in the Schedule—for a first offence to be reprimanded and discharged on payment of costs. For every subsequent offence to a penalty not exceeding 5s. in addition to the costs, recoverable as above.

(a) It will be noticed that the *attempt* to shoot, snare, &c., any wild bird is made an offence punishable with a pound fine for *every bird* in respect of which the offence is committed. How many lives does a man attempt to take who blazes into a regiment of sandpipers? *Omnia presumuntur contra spoliatores*. We are reminded of the costermonger with his rusty sprats, who found himself liable under the Public Health Act (see page 385) to a fine of £25,000.

Exemption.—The following exemption, enclosed within brackets, is made by the 'Wild Birds Protection Act, 1881,' 44-5 Vict. c. 51; [A person shall not be liable to be convicted under section 3, (above) of exposing or offering for sale, or having the control or possession of any wild bird recently killed, if he satisfies the court either—

- (1) that the killing of such bird, if in a place to which the Act extends, was lawful at the time when and by the person by whom it was killed; or
- (2) that the bird was killed in some place to which the Act does not extend; and the fact that the bird was imported from some place to which the Act does not extend shall (until the contrary is proved) be evidence that the bird was killed in some such place.]

In the case of non-scheduled birds, under (2), no penalty attaches to a killing or taking, at any time, by the owner or occupier of any land, or by any person by him authorised, upon such land.

Any person 'found offending' may be required by any person (sec. 4) to give his name and address. Penalty for refusal or evasion, if a conviction be obtained but not otherwise, 10*s.*, in addition to any penalty incurred under section 3.

All offences committed within Admiralty jurisdiction may be dealt with in any county or place in which the offender is apprehended, or in custody, or summoned, in the same manner as if the offence had been committed within that county or place; and the offence may be averred to have been committed 'on the high seas;' see page 228.

Power is given to a Secretary of State, upon application from Quarter Sessions of any county, to extend or vary the time during which the killing or taking of wild birds, or any of them, is prohibited; and to exempt any such county, or any part thereof, as to all or any wild birds, from the operation of the Act.

There is no law against birds-nesting, or destroying eggs,

except in some special instances under the Game Act; see page 210. See also **ROOKS**.

Schedule.—The schedule contains eighty-five names, and embraces most of our ordinary sea birds, the black-backed gull being specially excepted. Among land-birds we find the cuckoo, goldfinch, kingfisher, lapwing, nightingale, owl, plover, snipe, teal, tern, widgeon, wild duck, woodcock and woodpecker. The lark has been more recently included, by a special clause in the Act of 1881. [As regards this Schedule the reader will do well to refer to a letter from Mr. Clough Taylor, in the *Times* of September 28, 1880.]

BIRTHS AND DEATHS REGISTRATION. Under the 37-8 Vict. c. 88, provision is made with respect to the registration of births and deaths, and the conduct of burials. The following among many other offences are summarily punishable :—

1. (Sec. 1). Parent, &c., of child neglecting to give notice of its birth to the Registrar within forty-two days (N. B.—All notices may be sent by post), [40s.].
2. (Sec. 10). Relatives or others, where a person dies in a house in their presence, not giving notice within five days, [40s.].
3. (Sec. 11). Relatives or others, where a person dies not in a house, or where a dead body is found, not giving notice within five days, [40s.].
4. (Sec. 18). Burying child born alive as if still-born, [£10].
5. (Sec. 20). Medical practitioner who attended any deceased person neglecting to give certificate of the cause of death, [40s.].
6. (Sec. 40). Wilfully giving false information to the Registrar concerning birth or death—or making any false certificate or declaration required by the Act—or making any false statement with intent to have the same entered on any register of births or deaths, [£10]

on summary conviction]. If the Justices be of opinion that proceedings ought to be taken under this section by indictment, they may proceed accordingly; in which case the offender is liable, on conviction, to penal servitude. The Superintendent Registrar may prosecute in all cases. Proceedings before two Justices.

BLASPHEMY, at Common Law, is the misdemeanour of denying or scoffing at the doctrines of Holy Scripture, Christianity being part of the Law of England, (Black. IV., 59). 'Scripture est common ley, sur quel tous manières de leis sont fondes:' per Priscot, C.J. temp. Hen. VI. Any *writing* of this description is a blasphemous libel, punishable as a misdemeanour upon indictment at Assizes. In the Criminal Code Bill, 1879, it was proposed formally to enact that no person should be liable to conviction for expressing in good faith and decent language any opinion whatever upon the subject. Priscot wouldn't have stood that. He would have answered, from his own point of view, 'Ce n'est pas la guerre. It is your polished gentlemen with rapiers who do the mischief. The howling bludgeon-men are not worth powder and shot.' Perhaps, however, at the present day, we must reserve our punishments for those who affront our sense of decency by the *manner* in which they assail the truths of revealed religion. Open ribaldry in this respect is a simple insult to society, and to be sternly discountenanced as such. As regards the use of profane language in public, see SWEARING, and POLICE OF TOWNS (4).

BREAD. The leading Act upon this subject (6 & 7 W. IV. c. 37) applies to the sale of Bread anywhere out of London, beyond the weekly Bills of mortality, and ten miles from the Royal Exchange. It imposes a penalty of 40s. upon 'bakers or sellers of bread selling bread in any other manner than by weight,' (sec. 4). There is an exception in

the case of 'French or fancy bread,' and 'rolls.' But the bread which, when the Act was passed, went under the former name, is now matter of ordinary consumption, and 'we cannot suppose that the legislature meant to stereotype a particular article, and to say that, because it was then an article of luxury, it should be so regarded in all time, no matter what change or improvement might take place in the common food of the country. The baker is no longer at liberty to sell at so much per loaf. He must sell at so much per pound; and the customer is to be supplied with so many pounds of bread, unless he chooses to have an article of exceptional quality—*something that is not ordinary bread*; and, if he buys *that*, the baker may sell without reference to weight,' per Lush, J., *R. v. Wood*, L. R. 4 Q. B. 559.

A baker must not sell 'the lump called a quartern loaf' *eo nomine*. Its presumable weight is four pounds; and although he is not bound to weigh it, unless required, in the presence of his customer, it is understood that what he is bound to deliver as a quartern loaf is four pounds weight of bread; *Mitton v. Troke*, 20 L. T. N. S. 563. He must not content himself with weighing the dough, and making what he thinks an adequate allowance for loss in baking—especially when the wind is in the east: see *Jones v. Huxtable*, L. R. 2 Q. B. 460.

Every baker is bound to keep fixed in a conspicuous part of his shop, near the counter, a beam and scales with proper weights, 'in order that all bread there sold may be weighed in the presence of the purchaser' (sec. 6); and if carrying or sending out bread for delivery *in any cart or carriage*, to provide it with similar apparatus. Penalty for omission, or for refusing to weigh bread *when required to do so*, £5.

After these preparations for weighing it, the baker may make his bread of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice or potatoes; and with salt, water, eggs, milk, barm, leaven, and potato or other yeast,

and with *no other ingredient whatsoever*. The extreme penalty for infringing this rule (sec. 8) is £10, part of which is to be laid out in advertising the offender's name and crime in a newspaper. Hard labour as per scale, page 428, in default. If our baker's bread be made wholly or partially of peas, beans, or potatoes, or of any other grain than that of wheat, it must be stamped with a capital M, under a penalty of 10s. per lb. (sec. 10).

Adulterating flour is punishable by a fine not exceeding £20 (sec. 9); and this extends to selling the flour of one sort of grain for the flour of another.

A search-warrant may be issued by any Justice, empowering any constable to enter, at seasonable times, any place wherein any miller, baker, &c., shall grind grain or bake bread for sale (see secs. 11, 13, 16).

A baker is of course liable to prosecution under the 'Adulteration of Food and Drugs Act;' and for scale-offences under 'Weights and Measures.'

Finally, under section 14, any baker making or baking any bread, rolls, or cakes of any sort, on the Lord's day; or *after 1.30 p.m. on that day* selling any such, or baking or delivering any meat, pudding, pie, or victuals, or otherwise exercising his worldly calling, is liable in 10s. for the first offence; 20s. for the second. Information within six days.

All the above matters may be dealt with by one Justice, subject to the provisions stated under SUMMARY JURISDICTION (4). Penalties (except under sec. 8) recoverable by distress. But the information (except under sec. 14) must be laid within forty-eight hours or a reasonable time (*i.e.*, allowance may be made for an intervening Sunday). Appeal to General or Quarter Sessions. Execution of judgment to be in the meanwhile suspended.

The 'Bakehouse Regulation Act,' (26-7 Vict. c. 40) was repealed by the 'Factory Act, 1878,' which provides (sec. 34) for the sanitary arrangements of these establishments. See also 46-7 Vict. (1883) c. 53, sec. 15.

CANAL-BOATS. The Duke of Richmond stated in the House of Lords on the 8th of August, 1877, that the inland floating population on our canals was variously estimated at from 29,000 to 80,000 persons. In reality it appears to exceed 100,000. This very wide margin is no doubt partly owing to the extreme difficulty attending census operations on a canal. It is the immemorial custom on board barges to pitch all 'papers' at once 'into the cut.' This, however, is the less material, inasmuch as the returning officer, on calling next morning for the form left to be filled in, generally finds that the barge and all on board have shoved off during the night, and may perhaps be twenty miles away. At any rate, in view of the extraordinary demoralization and degradation produced among women and children, who form the great bulk of our canal population, by life under the most pitiable and often revolting conditions, the Act of 1877 was demanded by every consideration of justice and humanity.

Under the 'Canal-boats Act, 1877' (40-1 Vict. c. 60), the Local Government Board are required to make regulations—

- (i.) For the registration of Canal-boats.
- (ii.) For the marking and numbering of such boats.
- (iii.) As to the number, age, and sex of their inhabitants.
- (iv.) For enforcing cleanliness, &c., on board.
- (v.) For preventing the spread of infectious disease through boats.

No unregistered boat may be used as a dwelling after six months from the coming into force of such regulations. If used in contravention of the Act, penalty on master, and owner (if in fault), 20s. per day.

Regulations to the above effect were made by an Order dated the 20th March, 1878, which came into effect on the 30th of June following. The period from which the registration of inhabited boats became compulsory dates accordingly from the 1st of January, 1879. A similar Order

(17 May, 1878) declares which of the Sanitary Authorities of England and Wales are to be Registration Authorities for the purposes of the Act.

Powers are given to every Sanitary Authority within whose district a canal, or any part of a canal, is situate, to exercise all powers in relation to provision against infection conferred by the Public Health Act (see title), and to detain for the necessary period any infected boat.

Powers of entry are conferred in case of suspected contravention of the Act, or of the supposed existence of infectious disease on board, upon the authorization of a Registration or Sanitary Authority, or of any Justice. Penalty for obstruction, 40s.

As regards the education of canal-children (secs. 6, 7), every child is to be deemed resident in the place to which the boat is registered as belonging, and to be subject to any bye-laws in force, under the Education Acts, for that place.

All expenses are to be defrayed by Urban and Rural Sanitary Authorities out of their respective rates. Offences may be dealt with, by two Justices, either in the place where the boat is registered—or where the offence was committed—or where the offender may happen to be in custody. Penalties recoverable by distress.

See also 'Canal Boats Act, 1884,' 47-8 Vict. c. 75.

CATTLE STRAYING. 'If any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is at any time found straying on, or lying about any highway [or turnpike-road], or across any part thereof, or by the sides thereof, except on such parts of any highway [or turnpike-road] as pass over any common or waste or unenclosed ground,' the *owner* is liable to a penalty not exceeding 5s. for every such animal, together with the cost of returning it to his premises, or conducting it to and confining it in the parish pound or other place provided for the purpose. But he is not liable to pay more than 30s. in

any one case (however numerous the animals in fault) over and above expenses. Penalties recoverable by distress. Hard labour cannot be awarded in default of payment. Nothing in the above is to be deemed to take away any right of pasturage which may exist on the sides of any high or turnpike-road. Two Justices. (27-8 Vict. c. 101, sec. 25, as to highways; 34-5 Vict. c. 115, sec. 20, as to turnpike roads).

It has been held that animals must not 'stray on or lie about' a highway, even in the presence of a person acting as their keeper; *Laurence v. King*, L. R. 3 Q. B. 345. But a *bonâ fide* driver of sheep, &c., may of course stop to rest without any consequent liability.

Cattle damage feasant—impounding.—In the case of cattle straying upon private ground, the occupier may distrain and hold them until satisfaction made for damage done, driving them, if he pleases, for safe custody to any public pound within the county, not more than three miles away. But he has no right to seize them at all after tender of sufficient amends. Nor may he retain them after like tender made before they have actually reached the pound. And should he, in either case, extort an exorbitant ransom, the overcharge, if paid under protest, may be recovered by action; *Green v. Duckett*, Q. B. May, 1883, 52 L. J. 435. Should the owner dispute the right to distrain, or be compelled to recover his property by dint of law, he may apply to the Registrar of the District County Court who will authorise him to replevy, or take home the trespassers, upon certain conditions as to security and trial provided by the 19 & 20 Vict. c. 108, ss. 63—5.

Pound-breach.—Animals seized as above are regarded as in the custody of the law itself, rather than in that of the private distrainer, and to recapture them in the first instance, or *à fortiori* after being actually impounded, is stigmatized by Blackstone as 'an atrocious injury,' to be redressed either by writ of *rescous* or *pound-breach* as the case might be. Such misconduct is now guarded against by the 6 & 7 Vict. c. 30,

which enacts that any person who shall release or attempt to release any horse, &c., or cattle, lawfully seized for the purpose of being impounded (in consequence of having been found straying, lying, or being depastured on any inclosed land without consent) from the pound or place of confinement, or on the way to or from such pound or place, or who shall damage or destroy such pound or place, or any lock or bolt, shall be liable upon summary conviction to a penalty not exceeding £5 and costs, with hard labour as per scale, page 428, in the alternative. Information upon oath. Two Justices. Any portion of the fine to the distrainer. As regards the obligation to feed impounded cattle, see page 147, (5).

CHARACTER. Evidence of previous good character may be given in favour of the accused at the hearing, as an element in his defence; but evidence of previous bad character cannot, generally speaking, be given against him. The one is relevant to the issue which is being tried, the other is not. Evidence that I have for twenty years borne an unimpeachable character for honesty, renders it extremely unlikely, *a priori*, that I should steal a spade. It creates an antecedent improbability, which it requires a corresponding degree of testimony to surmount. But evidence that I have borne a bad character during the same period could, at the outside, only have the effect of showing that it was not unlikely that I should steal a spade, and would not in the slightest degree bear upon the question whether I stole the particular spade inquired about. That unfortunate character may be the real secret of an unfounded charge, and has in all probability coloured the evidence against me. And it is illogical as well as illegal to attempt to undermine in this manner the presumption in favour of innocence which the law extends to all alike. Justices, therefore, should carefully abstain from giving any weight to adverse information upon the point of character (which is often officiously volunteered by the police) until they have made up their minds to convict upon

the evidence legitimately before them (a). The province of juryman and judge should be kept rigidly distinct (see JUSTICES). But when once the prisoner has been convicted, evidence of previous misbehaviour has its proper value, as bearing upon the animus which prompted the act, and as affecting the degree of punishment by which it ought to be followed.

As to characters of servants, see MASTER AND SERVANT.

CHILDREN, OFFENCES BY. We are all of us, by this time, pretty well agreed that to send a young child to prison, unless for some deed of wickedness beyond its years, is an act involving fearful responsibility. The punishment, in itself, may be but slight. But in its result may lie lasting and immeasurable wrong. You have branded a boy with prison-taint (b). You have laid him open to life-long taunt. You have dispelled the mystery of the gaol, and taught him all too soon that there are worse places in the world than even

(a) A man was indicted the other day for stealing a watch from the pocket, which in professional fashion he had at once passed on to an accomplice. Consequently he was searched in vain. The evidence, however, was clear enough, and while the jury were considering their verdict, I saw the Judge, by whom I chanced to be sitting, write down the word 'Guilty' at the foot of his notes. He should have waited a little. The prisoner had been well defended; the case was the first which that jury had tried, and they couldn't get over the tumultuous eloquence of his counsel about the watch not having been found. So, in five minutes' time, they turned round and mildly answered, 'Not Guilty.'

'Gentlemen,' said the Judge, as the prisoner bolted like a rabbit down the steps, 'I may now tell you that I have here four previous convictions for similar offences against that man.'—'Oh, my Lord, why couldn't you say so before?' cried the foreman.

A prisoner has at least twice his natural chance of escape when he is the *first* to come under the hands of a new jury.

(b) It is the *suspicion* of moral contamination contracted in prison which makes employers and others always so shy of a gaol-bird, even when the offence for which he was sent up was in itself of no grossly dishonest or scandalous character.

the terrible House of Correction. You have driven him to brazen it out, and set up for a hero among his companions. In the case of a young girl, the injury is a thousand-fold greater. You bruise her life almost beyond hope when you force her within those shameful walls. What, then, are we to do? In the case of thievish and mischievous boys, especially, there can be no doubt but that the birch-rod is the right and real remedy. It is dreaded in the first place. That counts for a great deal. It inflicts not the slightest permanent harm, either moral or physical, in the second. That is better still. The fact is that where a Justice has not Solomon's rod at his command he has only fine or imprisonment to fall back upon. These are not meant for boys. It is like going after a bluebottle with a blunderbuss. A boy cannot pay a fine, and in many cases it is cruel injustice to extort money from the parent as the price of that child's release. The former may very possibly deserve to have to pay, but it is as likely as not that he won't accept his deserts until the mother, brothers and sisters of the offender have gone upon half rations. *Das veniam corvis, vexat censura columbas.* Besides, our object ought to be to punish the child, and to educate him into feeling that he is himself to suffer for his own misconduct. Corporal punishment, as we have seen at page 36, may now be ordered in certain specified instances. But observe how crookedly we go to work. One boy enters an orchard and stuffs his pockets with fallen fruit. Another climbs the tree, breaks boughs, does no end of damage, and equally steals the apples. The first is guilty of an *indictable* offence; the second, not, as you may see explained under the same parable in our Note on Larceny. You may whip the one, but not the other. The first goes off with his cuff in his eye, in limp and genuine consternation, to a transaction which he deprecates more than tongue can tell. He leaves you puzzling what to do with No. 2, having nothing but your old, lumbering stock in trade—fine or imprisonment—to fall back upon. Even in cases of sheer mischief, where

the wisdom of generations, let alone the traditions of Eton and Harrow, teach us to whip and have done with it, there is, generally speaking, no authority whatever to do so (a).

It is true, no doubt, that there are Industrial schools to which, under certain circumstances, juvenile offenders may be sent, and that this course is specially referred to in the Summary Jurisdiction Act. But the idea of sending every naughty boy to an Industrial school is absurd upon the face of it. The whole question has recently excited full attention, as one of national importance; and anybody who can help us to solve it effectually will deserve well of his country (b). It would be an immense boon, especially in a populous Division abounding with bad boys, like that in which these lines are written, if there were some legitimate way of ordering a boy or girl to be locked up in solitude under charge of the superintendent of police for four-and-twenty hours. Provision might easily be made for the purpose, which would not only save the county the cost of

(a) I wish emphatically to disclaim the notion that because a boy has committed an offence he should *necessarily* be dealt with after this fashion. I have suggested an alternative mode of treatment in the text, which might be far preferable in many cases. I only assert that it ought to be known by boys that Justices are armed with the power of the birch, and that for a hundred petty offences it is by far the best and most appropriate punishment. Let us remember at the same time, while we moralise upon the necessity of thus considerably curbing the exuberance of 'persons under fourteen,' that it will be an evil day for England when there are no longer any boys who deserve it.

(b) Suggestions from influential quarters have been made to the Home Secretary to the effect that Justices should have the power of *fining the parent*, instead of the child, in cases where, through habitual neglect or otherwise, the former appears to have conducted to the offence complained of. This is a proposal which has, at first sight, a good deal to recommend it. But it really amounts to making the father *directly* punishable for the (assumed) results of indolence or bad example, as displayed in a transaction with which he had nothing whatever to do. And this, when carried, as it must necessarily be, to the point of imprisonment in default of payment, would constitute a strong measure.

an imprisonment but possibly the cost of a criminal. It would not be 'imprisonment' in any degrading or demoralising sense. It would simply be the detention of a child already in custody. There would be no romance about it—nothing heroic, no prison experiences to boast of. The obstreperous or mischievous boy, or board-school truant, locked up alone for twenty-four hours or so, with nothing in the world to do, a ferocious appetite, and a plank for the night, would have tasted punishment in its purest form. He would have undergone a very appreciable amount of pain and inconvenience, conveyed through other channels than those connected with any particular portion of his external surface. He would understand that he had been treated as a child. He would not have liked the treatment, nor the being delivered at his father's door next morning, like a parcel, with one shilling to pay.

Some such plan as this, at least while a false and morbid sentiment disallows us even the *menace* of the birch, would probably supply a link which is now certainly missing. We should at least be able to keep the terrors of real prison longer in reserve. We should be able to inflict a sufficient and salutary warning. Last, but not least, we should instil the lesson of personal responsibility, which is wanting when a child sees his unlucky parent produce the fine.

In any event, it will be remembered that Justices have now the power to dispose of trifling offences with every due regard to leniency, (page 37) and that a child under 12 cannot, under any circumstances, be imprisoned upon summary conviction for more than a month, or fined more than forty shillings.

OFFENCES AGAINST CHILDREN.

1. **Neglecting Children.**—'Any parent wilfully neglecting to provide adequate food, clothing, medical aid, or lodging, for his child, being in his custody, under the age of 14, whereby the health of such child shall have been or

shall be likely to be seriously injured,' is liable, on conviction before two Justices, to six months' hard labour. Sentence may be suspended, on Defendant's giving security to come up for judgment (31-2 Vict. c. 122, sec. 37).

2. Abandoning Children.—'Whosoever shall unlawfully abandon or expose any child under the age of two years whereby the life of such child shall be endangered, or the health of such child shall have been, or shall be likely to be permanently injured,' is guilty of a misdemeanour (24-5 Vict. c. 100, sec. 27). Triable at Sessions. Bail 'discretionary.' [Pen. S. 5 y.; or impr. 2 y.]

3. Stealing Children.—'Whosoever shall unlawfully, either by force or fraud, lead or take away, or decoy, entice away, or detain, any child under the age of 14 years, with intent to deprive any parent, guardian, &c. . . . of the possession of such child; or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong. Or whosoever shall, with any such intent, receive or harbour any such child, knowing the same to have been by force or fraud,' &c., is guilty of felony, (24-5 Vict. c. 100, sec. 56). Triable at Sessions. Bail 'discretionary.' [Pen. S. 5—7 y.; or impr. 2 y. with whipping, if a male under 16.]

4. Defiling Children.—Whosoever shall unlawfully and carnally know and abuse any girl under twelve, is guilty of felony (38-9 Vict. c. 94, sec. 3). Not triable at Sessions. Bail 'discretionary.' [Pen. S. 5 y.—life; or impr. 2 y.]

In a recent case of criminal assault upon a girl under twelve, it was proved that she had been delivered of a full-grown child, then living, at the age of twelve years and one month. *R. v. Dean*, see *Times*, Jan. 16, 1879.

Attempting to have carnal knowledge of a girl under twelve is a misdemeanour (24-5 Vict. c. 100, sec. 52). Triable at Sessions. Bail 'compulsory.' [Impr. 2 y.]

Whosoever shall unlawfully and carnally know and abuse any girl above 12 and under 13, is also guilty of a mis-

demeanour (38-9 Vict. c. 94, sec. 4): Triable at Sessions. Bail 'discretionary.' [Impr. 2 y.]

Under the 43-4 Vict. c. 45, consent is no defence to a charge of indecent assault upon a person under 13.

5. Procuring Defilement.—Whosoever shall by false pretences or any fraudulent means, procure any female, under twenty-one, to have illicit connection with any man, is guilty of a misdemeanour (24-5 Vict. c. 100, sec. 49). Triable at Sessions. Bail 'discretionary.' [Impr. 2 y.] See CONSPIRACY.

See also ASSAULT (2), VAGRANTS (6), INFANT LIFE PROTECTION, and, as regards indictable offences committed by children, pages 36, 38.

CHILDREN'S DANGEROUS PERFORMANCES ACT, 1879. Any person who shall cause any child under 14 to take part in any public performance, whereby *in the opinion of a court of summary jurisdiction* the life or limbs of such child shall be endangered, is liable to a penalty of £10; and, in the event of an accident causing actual bodily harm, may be indicted as having committed an assault. Parents or guardians, &c., may render themselves equally liable with the employer to the above pecuniary penalty. 42-3 Vict. c. 34.

CHIMNEY-SWEEPS. Every chimney-sweep who employs any journeyman, assistant, or apprentice, must hold a police certificate, renewable annually, (38-9 Vict. c. 70, sec. 6). He may be deprived of it during the residue of the current year upon conviction of any of the following offences, cognisable before two Justices. The punishment in each case is a penalty not exceeding £10, recoverable by distress—half to the informer, half to the overseers of the poor of the place where the defendant inhabits. Appeal (see page 73).

1. (3 & 4 Vict. c. 85, sec. 2, and 27-8 Vict. c. 37, sec. 11).

Any person compelling or knowingly allowing any child or young person under 21, (proof of age on de-

fendant) to ascend or descend a chimney, or enter a flue, for the purpose of sweeping the same, or extinguishing fire. (Six months' hard labour may be awarded for this offence, in lieu of imposing a fine.)

2. (27-8 Vict. c. 37, sec. 6). Any chimney-sweep employing a child under 10 to do any work in the business, elsewhere than in the house or yard, &c., of such chimney-sweep.
3. (*Ib.* sec. 7). Any chimney-sweep, entering a building for the purpose of sweeping, &c., knowingly allowing a person under 16 in his employ, or under his control, to enter before, with, or after him, into any part of the building, or to be therein during any part of the time the chimney-sweep himself continues therein for any such purpose.

No person under 16 may be apprenticed to a chimney-sweep, (3 & 4 Vict. c. 85, sec. 6).

CHLOROFORM. Administering or attempting to administer chloroform, laudanum, or any like drug, with a view to the commission of any indictable offence: Felony, (24-5 Vict. c. 100, sec. 22). Not triable at Sessions. Bail 'discretionary.' [Pen. S. 5 y.—Life; or impr. 2 y.].

CHURCH. Any person guilty of riotous, violent, or indecent behaviour in any church, or chapel of the Church of England, or in any place of religious worship for Dissenters duly certified under 18-9 Vict. c. 81, whether during divine service or at any other time, or in any church-yard or burial ground, may be forthwith apprehended either by a constable or churchwarden, and is liable upon conviction before two Justices to a penalty not exceeding £5, recoverable by distress, or, in their discretion, to not more than two months' hard labour, (23-4 Vict. c. 32, sec. 2). Obstructing, whether by threats or force, a minister of any denomination in or from officiating in any church or place of worship, or at the

burial of the dead, or offering any violence to him while so engaged, or while going to or returning from such duty, &c. &c., is an indictable misdemeanour, punishable with two years' hard labour; 24-5 Vict. c. 100, sec. 36.

Sacrilege.—Breaking and entering any church, chapel, meeting-house, or other place of divine worship, and committing any felony therein;—or, being therein, committing any felony, and breaking out. Felony, (24-5 Vict. c. 96, s. 50). Not triable at Sessions. [Pen. S. 5 y.—Life; or impr. 2 y.].

As regards 'breaking and entering,' see **HOUSEBREAKING**.

CHURCHWARDENS. In all parish politics the Churchwardens play an important part. It has been said indeed that they are essential to the existence of a parish as such. No parish, let us hope, will risk the tremendous experiment. Here it is enough to note that they are a kind of corporation at Common Law, and that all goods and personal property belonging to the parish-church are vested in them on behalf of their real owners, the parishioners. They are also the guardians of the building itself, but in subordination to the minister, in whom the freehold is vested. They are *ex officio* overseers of the poor, and it is part of their duty to join both in making and collecting the rate. See **POOR**.

CLERK OF THE PEACE. To know for certain whether a Justice is familiar with his business in its wider aspect, there is nothing like enticing him to explain the duties of the Clerk of the Peace. The following is assuredly no complete account, but it may afford some notion of the extent and ramifications of county work.

The Clerk of the Peace, in every county, is appointed by the *Custos Rotulorum* (a), whose deputy he is, and in which

(a) This personage, who should be a man 'especially picked out from among the Justices for wisdom, countenance, and credit' is the principal civil officer of the county, as the Lord Lieutenant is the chief in military command (BL IV. ch. xix). The two offices are now commonly united in the same individual.

latter capacity he is in charge of the county records, &c. He holds his office *ad vitam aut culpam*, a power of dismissal for grave misconduct being vested in Quarter Sessions. He is, in the first place, the legal adviser of the court and its chairman, as well as of the various committees, both standing and special, and is bound to see that all orders made are warranted by the jurisdiction and correct in point of form.

As regards criminal business, it is his duty to superintend the preparation of all indictments; to issue the various processes of courts of Quarter and General Sessions (*e. gr.* writs to the Sheriff to summon jurors—writs of *fi. fa.*, *capias*, &c.); to attend the courts during their session, and record their proceedings; to tax all costs, and to draw up all orders. He sends an order of commitment to the prison with each prisoner, and returns particulars to the Home Secretary and the Treasury of every case tried. The estreat-roll is afterwards made up, comprising all estreated recognizances and fines, with a writ of *fi. fa.* annexed, addressed to the Sheriff. Finally, the indictments are indorsed with plea, verdict, and sentence, and the depositions, &c., connected with each separate trial are filed and indexed.

All summary convictions, as we have elsewhere noticed (see page 15), upon being transmitted from the various Petty Sessional Divisions, are filed in similar manner.

The full weight of the sessions for conducting the civil business of the county falls upon the Clerk of the Peace. He has to prepare and circulate the agenda papers, to file and copy all reports, petitions, letters and documents, draw up all orders, and communicate the same to the persons affected. He is by statute *ex officio* clerk to the County Licencing Committee (page 264), as well as to the executive committee under the Contagious Diseases (Animals) Act. He also acts as clerk to many of the other committees appointed by the Court, including the standing committees (Finance, Parliamentary, Highways, &c.) and the special committees appointed from time to time upon such matters

as Revision of standing orders—Fixing salaries of Coroners—making a basis for the county rate—As to Lunacy accommodation—Providing Judges' lodgings and lock-up houses—Altering and forming new petty sessional divisions, and a score of others. In all counties (except the metropolitan) he also acts as clerk to the Visiting Justices of private lunatic asylums.

Apart from judicial business, it falls to his lot to tax the law costs of all Overseers, Boards of Guardians, and Sanitary Authorities in the county, a task always troublesome and which is yearly becoming more laborious.

In addition to this, he is required in most counties to examine and check the Justices' clerks' quarterly returns. He has to peruse such bye-laws made by quasi-public bodies as require the sanction of Quarter Sessions, and advise the Court as to their legality. He has to file the rules of all Friendly Societies, local and private Acts of Parliament, enclosure awards, accounts of charities, lists of lunatics in County asylums, &c., &c.

In most counties, four county rates, viz., the General county rate, the Lunacy rate, the rate under the Animals Act, and the Highway rate, are made every quarter. It is his duty to calculate the sum payable by each parish, according to the basis, in respect of each rate, and to make out and serve the precepts.

The register of County voters is prepared by the Clerk of the Peace from settled lists received from the revising barrister. It must be complete for the Sheriff by the 1st of January in each year. The amount of labour and responsibility implied in these few words is enormous. He has also to make up the annual jury-book. After the lists are settled by the Justices in September, he arranges the names alphabetically, according to Divisions and parishes, in a volume which he delivers to the Sheriff.

Upon the appointment of every Justice, it is the duty of the Clerk of the Peace to ascertain that he is duly qualified and to administer and record the proper oaths.

It is his business to peruse all bills and papers presented to Parliament, and to call the attention of the Court to all those affecting the county or of interest to Justices.

He is constantly applied to by the Home Secretary for reports as to petitions addressed either to himself or to the Treasury in respect of matters of summary jurisdiction, and is called upon to furnish an indefinite number of 'Returns' either upon application from Government departments, or in obedience to Parliamentary order.

CLERKS TO JUSTICES. We have already referred to the position and duties of these gentlemen; see Preliminary Notes, p. 6. Every clerk, as a rule, appointed since the passing of the 41-2 Vict. c. 43, must be a barrister of not less than fourteen years' standing, or a solicitor. Under this Act remuneration is now made by fixed salary, instead of as formerly being provided by the court fees. The fees themselves go in aid of the county or borough rate. A table of certain fees authorized at Petty Sessions in Middlesex will be found in the Appendix, (No. XIX). The person at whose instance any work is performed by the clerk is primarily liable to pay for it, and the clerk is not bound to act without his fee. Thus, in the case of an ordinary Information, the prosecutor must accept the risk of having to pay the costs of the hearing, &c. And, if no order be made that the defendant pay the costs, or if the costs ordered cannot be recovered by distress or otherwise, he may be called upon to discharge them in earnest. But this liability is a mere debt, and must be enforced, if at all, in the County court. Justices have no power to interfere in the matter. Any Justice, however, has authority to remit any fee, either wholly or in part, when, owing to poverty, or other reasonable cause, it seems proper that this indulgence should be shown.

COIN. Any person to whom a gold or silver coin is tendered, and who suspects it to be light or counterfeit, is at

liberty to cut, bend, or break it. If he turn out to have been in the right, the person tendering the coin must bear the loss. If wrong, the bent or broken money must be accepted at its full rate. A coin, however, must not be objected to in this fashion as light, simply because it may be the worse for 'reasonable wear.' Should any dispute arise, it may be settled in a summary manner by any Justice, who is empowered to examine upon oath as well the parties themselves as any other person able to throw light upon the matter, (24-5 Vict. c. 99, sec. 26).

There is no penalty for melting down or otherwise using the Queen's coin in the way of bullion, as is done to a very considerable extent by jewellers and others (*a*).

Any person finding in any place whatever, or in the custody of any person having the same without lawful excuse, any counterfeit coin, or coining tools or apparatus of any description, or any filings or clippings produced by the 'sweating' process, is *required* at once to seize the same, and carry them forthwith before a Justice. And a search-warrant may be issued and executed, by day or night, upon suspicion of the existence of any such coin or implements, (sec. 27).

The following are among the more ordinary indictable offences. All are felonies, except the misdemeanours marked 5, 6, 7, 9, 11, and 12. Offences numbered 1, 2, 4, 8, and 13 are triable only at Assizes. Bail, in felonies, and misdemeanours prosecuted by the Treasury, 'discretionary.'

(*a*) I paid a bill with three sovereigns the other day at a watchmaker's. In the course of conversation about his work, he melted one into a fluid button with his blow-pipe, sliced up another, and rolled the third into a laurel-leaf which might have done for the Turnerelli wreath—just as illustrations of what he was telling me. He used them by hundreds, he said; the quality of the gold being absolutely certain, so that a great deal of trouble was saved. '*Sic vos non vobis*' we may say to the Mint.

OFFENCES UNDER 24-5 VICT. C. 99.

N.B.—Any person whatsoever may apprehend any person ‘found committing’ any offence against this Act, and deliver him to a peace-officer, (sec. 31).

1. (Sec. 2). Falsely making any coin resembling, or apparently intended to resemble or pass for, any of the Queen’s current gold or silver coin, [Pen. S. 5 y.—Life; or impr. 2 y.]
2. (Sec. 3). Gilding or silvering any metal for coining purposes; gilding or filing copper coin, to make it pass for gold or silver; or gilding silver coin to make it pass for gold, [same].
3. (Sec. 4). Impairing or lightening gold or silver coin, *with intent* that the same may pass for current coin, [Pen. S. 5—14 y.; or impr. 2 y.].
4. (Sec. 6). Buying, selling, receiving, or putting off any counterfeit gold or silver coin *for a lower rate or value* than that imputed by its denomination, [Pen. S. 5 y.—Life; or impr. 2 y.].
5. (Sec. 9). Knowingly tendering or uttering any counterfeit coin resembling current gold or silver coin, [impr. 12 months].
See *R. v. Hermann*, C. C. R., Mar. 22, 1879, 4 Q. B. D. 284; where the ‘counterfeit coin’ was a genuine sovereign, reduced by filing a new milling.
6. (Sec. 10). Knowingly, &c. (as in last offence), having at the time in possession any other piece of such counterfeit coin; — or, on the same day, or within the next ten days, tendering or uttering such, [impr. 2 y.].
7. (Sec. 11). Knowingly having in possession three or more pieces of counterfeit gold or silver coin, with intent to utter, [Pen. S. 5 y.; or impr. 2 y.].
8. (Sec. 12). Second conviction for offence 6 or 7, [Pen. S. 5 y.—Life; or impr. 2 y.].
9. (Sec. 13). Tendering as gold or silver coin, with intent

to defraud, any foreign coin, or any medal, &c., resembling, but being of less value than, the current coin, [impr. 12 months].

10. (Sec. 14). Counterfeiting copper coin, &c. [Pen. S. 5—7 y.; or impr. 2 y.].
11. (Sec. 15). Tendering counterfeit copper coin; or knowingly having in possession three pieces with intent to utter. [Impr. 12 months].
12. (Sec. 16). Defacing gold, silver, or copper coin, by stamping thereon any names or words, [same].

This offence is complete without any intent to utter. Passing such defaced coin is punishable, (sec. 17), but only with the consent of the Attorney-General.

13. (Sec. 24). Unlawfully making, mending, or having in possession any coining tools or apparatus, [Pen. S. 5 y.—Life; or impr. 2 y.].

As to 'medals resembling coin,' see 46-7 Vict. c. 45.

COLORADO BEETLE. Any person having under his charge any crop, who finds or *knows of* a Colorado beetle thereon, is at once to give notice to a constable, who is at once to give notice to the local authority, who is at once to give notice to the Privy Council, who are to do what is right in the matter. No person may part with or cherish the insect alive, in any stage of its existence. Penalty for every offence of omission or commission, £10; half to the informer. 'Colorado Beetle Order, 1877'; under 40-1 Vict. c. 68. See also 41-2 Vict. c. 74, sec. 4.

COMPOUNDING OR COMPROMISING OFFENCES.

A private prosecutor generally appears before a court of summary jurisdiction from essentially selfish motives. He has sustained some damage to his person, his property, or his susceptibilities, for which he requires personal satisfaction. He comes forward simply as a volunteer. In many cases it is more gratifying, as well as much less troublesome, to see an

adversary convicted by a bench of Justices than to sue him for compensation in a civil court. In others, as under the Cruelty to Animals Act, for instance, his own private instincts may suggest that an offender ought to be punished, and he takes out his summons accordingly. He does what he thinks right, and is free to do it or leave it alone. But, when once a summons has issued, the law assumes that his interference was in obedience to public duty, and took place on behalf of the Crown. This is a view of the case which he cannot be allowed to disclaim. He has therefore, no right, at any subsequent stage of the proceedings, to consider that he is in reality the person to be satisfied, or that he has any power to control the machinery which he has set in motion. When Justices are once seised of the matter all right to compromise it, or prevent a conviction, is at an end. It is not necessary to carry this doctrine in practice to an oppressive point. Cases often arise in which it is wise to allow a mere personal charge to be withdrawn; but it should be understood that this is purely a matter of indulgence, and that the proper time to agree with an adversary is 'whiles thou art in the way with him.'

Blackstone, indeed, stigmatises any concession of the kind as a dangerous practice, which, although it may be permitted to the Judges of the superior courts, ought never to be allowed in inferior jurisdictions, where prosecutions for assaults, &c., are frequently, as he observes, commenced from a desire to extort compensation rather than for public ends. Even a voluntary forgiveness by the party injured ought not, he insists, to intercept the stroke of Justice. The right of punishing belongs not to him but to society in general; and whilst a man may renounce his own portion of this right, he cannot give up that of others.

As regards indictable offences, the mere concealment of a felony which comes to one's knowledge is said to amount to the misdemeanour known as a 'misprision.' At all events a man may be punished for misdemeanour who takes his own

stolen goods back again, or receives any compensation for their loss, or for any other felonious injury, upon condition of not prosecuting the felon. And any agreement for hushing up a misdemeanour of a public nature is utterly illegal and void, if not actually criminal; see *Whitmore v. Farley*, May, 1881, 45 L. T. N. S. 99. In any case a prosecutor who has been bound over in the usual manner, forfeits his recognisance should he fail to appear *and give evidence*.

It is a felony (for which Jonathan Wild was very properly hanged) corruptly to take any reward, directly or indirectly, in consideration of helping any person to recover stolen or extorted property, unless the undertaker shall have used all diligence to bring the offender to justice, (24-5 Vict. c. 96, sec. 101); and any person advertising a reward for the restoration of lost or stolen goods, with no questions asked, or words to that effect, as well as the printer of the advertisement, forfeits £50 to any one who may sue for it; but proceedings against the *printer* must be with the assent of the Attorney-General, (sec. 102; and see 33-4 Vict. c. 65, sec. 3).

We may notice that under the same statute (sec. 108) an offender may be discharged from a (first) summary conviction for larceny, upon making such amends to the prosecutor as shall be ascertained by the court: and a similar provision is contained in the Malicious Injuries Act, 24-5 Vict. c. 97, sec. 66. See PROSECUTION OF OFFENCES.

CONCEALMENT OF BIRTH. 'If any woman shall be delivered of a child, every person who shall by any secret disposition of the dead body of the said child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof,' is guilty of misdemeanour (24-5 Vict. c. 100, sec. 60). Not triable at Sessions. Bail 'discretionary.' [Impr. 2 years.]

Any person acquitted upon a charge of murdering a newly-born child, may, upon sufficient evidence, be then and there

found guilty and punished as if the indictment had been for concealing its birth (*ib.*).

CONSPIRACY. If a thief makes up his mind to rob my house, he is clearly not punishable for a crime which he has only imagined, or for a resolution of which he may repent by the way. But if he talks the matter over with another thief, and they agree that it is the right thing to do, and ought to be done, even although the second is to take no part in the actual business, they are both guilty of conspiracy to do an unlawful deed, and *the misdemeanour is already committed*.

Each is liable—as are all ‘conspirators’—to be committed and indicted, either at Sessions or Assizes, subject to this proviso, that if the offence conspired about be in its nature triable *only* at the latter, the misdemeanour of conspiring to commit it is equally triable there alone. And when two persons are indicted and tried together, both must be convicted or both acquitted; *R. v. Manning*, 53 L. J. M. C. 85. The punishment in all cases is fine or imprisonment, or both, at the entire discretion of the court.

But the law goes much further than suggested by the above instance. In its detestation of everything approaching a conspiracy, it holds that it is a criminal misdemeanour *per se* for two or more people to lay their heads together to accomplish a forbidden end even by intrinsically harmless means, or an end which is not forbidden by means which are not innocent, or even to bring about that which would give the person affected a right of civil action, *R. v. Aspinall*, Appeal, Feb. 21, 1877. Nor is it safe, by this kind of combination, even to attempt an object which, although not perhaps punishable in itself, is nevertheless *contra bonos mores* and obviously wrong. The single-handed sinner may escape, but when ‘the wicked join hand in hand they shall not go unpunished.’

It is not an illegal thing in itself to bull or bear consols.

But it was decided in *R. v. De Berenger* (Lord Cochrane's case), 3 M. & S. 67, that if two or more people endeavour to do so by agreeing to spread false news, they are all guilty of a misdemeanour. It is an indictable offence, according to Lord Ellenborough, for two persons to go together to a theatre with the settled intention of hissing an actor or damning the piece.

In a leading case, *R. v. Delaval*, 3 Burr, 1434, a well-known profligate in high life conspired with a music-master to effect the seduction of a young girl, under circumstances of the most heartless and diabolical ingenuity. She was not only possessed of great personal beauty, but was gifted with rare musical genius, and her apprenticeship to the professional defendant was part of a deliberate plot. 'It is true,' observed Lord Mansfield, in granting a criminal information, 'that many offences of the incontinent kind are to be considered as *sins* only, and must be left to the conscience of the offender. But the King's Bench has superintendence of offences *contra bonos mores*, and a *conspiracy* to corrupt the innocence of a young female is an offence which we can visit with infamous punishment. If Sir Francis Delaval had merely seduced this young girl, he might only have been liable to an action for damages at her father's instance; but having entered into a wicked bargain, by which he purchased her from another, the two must be considered as having *conspired* to ruin her, and they are both guilty of a misdemeanour.'

Therefore, while neither Sir Francis nor the music-master could have been punished separately for any part of the transaction, they discovered with dismay, when it was all too late, that the whole doctrine of conspiracy and its consequences had been overlooked in their education. They had joined hands in their villainy; and the rules which we have been endeavouring to enforce were the only available consolation, as they went together to the House of Punishment.

CONSTABLES. The Police force in counties is under the jurisdiction of the Justices in Quarter Sessions, its expenses, including those of station-houses, &c., being defrayed out of a police rate, levied and collected with the county rate, and supplemented by a contribution (conditional upon its efficiency) from the Commissioners of the Treasury. Municipal Boroughs, the police establishment of which is otherwise independent, may agree to consolidate their police with those of the county. The appointment of parish constables is regulated by the 35-6 Vict. c. 92; that of special constables by 1 & 2 W. IV. c. 41. See SPECIAL CONSTABLES; also METROPOLIS.

Any county constable guilty of neglect or violation of his duty is liable to a penalty of £10, or, at discretion, to one month's hard labour (2 & 3 Vict. c. 93, sec. 12). The punishment is the same in the Metropolitan Police District (2 & 3 Vict. c. 47, sec. 14). As regards Borough constables, see 'Municipal Corporation Act, 1882,' sec. 190, *et seq.*

Assaulting any police constable in the execution of his duty is, as we have seen, a serious offence (ASSAULT, 3, 15, page 89).

The summary power of punishment under (3) applies only to the case of *actual assault*; but under the 1 & 2 Will. 4, c. 41, sec. 11, the assaulting or *resisting* or inciting to resist any special constable in the execution of his duty is thus punishable with a fine not exceeding £20, recoverable by distress, with hard labour in default; and by the 2 & 3 Vict. c. 93, sec. 8, this provision is extended to the case of county constables. Resisting or inciting to resist a borough constable is punishable under the Act of 1882, just cited, sec. 195, and a like offence within the Metropolitan Police District, under the 2 & 3 Vict. c. 47, sec. 18. The penalty in the latter case is £5, or, in the discretion of the court, one month. There seems to be no power to award hard labour in this instance.

See also VAGRANTS (25).

On the other hand, 'police constables should understand

that while the law has made special provision for punishing assaults upon them in the execution of their duty, a still graver offence is committed when the constable is himself the aggressor, and the unlawful blows are struck with the official staff.' *Per* Assistant Judge of Middlesex.—*Times*, September 11, 1880.

Every constable on duty is supplied with a truncheon and a pair of handcuffs. He is expected, however, to reserve these implements for occasions of emergency, and the former should not be unnecessarily displayed. But it is always to be recollected that a constable is bound to place himself in situations which few people would encounter by choice, and that it is cowardly and barbarous to punish him for an error in judgment as discovered afterwards, and looked at from an easy-chair point of view.

DUTIES WITH REGARD TO PERSONS APPREHENDED.

Referring to what has been already said under the title ARREST, it remains to make a few observations upon the conduct to be pursued towards persons who have been apprehended or given into the custody of the police, until they can be formally charged before a Justice. Under the Summary Jurisdiction Act, 1879, sec. 38, every person taken into custody without a warrant is to be brought before a court of summary jurisdiction as soon as practicable, and if it be not, or will not be practicable to bring him before such a court within twenty-four hours after his arrest, a superintendent or inspector of police or officer in charge of a police station is to enquire into the case, and, except where the offence appears to him to be of a serious nature, is to discharge the prisoner upon his recognisance, with or without sureties, to appear before the court at a stated time and place.

For a corresponding provision as regards Borough watch-houses, see Municipal Corporations Act, 1882, 45-6 Vict. c. 50, sec. 227.

Whenever a person charged with an offence punishable on summary conviction is in custody, without warrant, within the Metropolitan Police District, any constable in charge of a station house during the hours when police courts are shut, may, if he deem it prudent, take the recognisance of such person for his re-appearance in due course. There is no corresponding provision as regards County Police.

Questioning prisoners, &c.—When it is uncertain whether a crime has been committed or no, as in *R. v. Berriman*, 6 Cox C. C. 388 (concealment of birth), a constable has no right to fish for materials by questioning the suspected person. When it is certain that a crime has been committed, he may be justified (after a proper caution) in putting questions to anyone under suspicion with a view to ascertain whether he would be justified in arresting him. He has, however, no business to interrogate a person actually in custody or whom he has already made up his mind to take into custody. But it is no part of his duty either to caution a prisoner not to criminate himself or to check him in doing so. He is bound, in the first instance, distinctly to inform him of the charge upon which he is taken. He is also bound to note down and preserve *for the purposes of evidence* any voluntary observations which he may offer in reply or otherwise and which appear to have any bearing upon the matter in hand.

There is no statutory power to search a person upon his arrest, but the common-law right of doing so has been abundantly recognised both by statute and otherwise. In fact if we are to lock a man up at all it would be absurd not to ascertain (in cases where such a precaution appears necessary) that he has nothing about him with which to do damage either to himself or others. And if a man be apprehended upon the charge of stealing a purse, Common Sense at once puts her hand in his pocket. Unless, however, there be some ground for supposing that an examination of this kind is likely, with reference to the nature of the particular

charge, to further the ends of Justice, or unless from the appearance or conduct of the prisoner it is judged unadvisable to leave him in possession of a knife or similar article there is no ground for inflicting upon him the indignity of a personal search. And 'where any property has been taken from a person charged before any court of summary jurisdiction with any offence punishable either on indictment or on summary conviction, a report shall be made by the police to such court of the fact of such property having been taken and of the particulars of such property. And the court, if it be of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, *shall direct* such property, or any portion thereof, to be returned to the person charged, or to such other person as he may direct.' Summary Juris. Act, 1879, sec. 44. The right of search is in practice extended to the room or lodgings in which a prisoner charged with felony may be apprehended, and is assumed without the formality of a warrant, which is, in strictness, necessary for the purpose. See SEARCH WARRANT, and on the general question of property criminally taken, RESTITUTION OF STOLEN PROPERTY.

No excuse for the suspicious possession of property is more common than that the holder had been fortunate enough to *find* it. Where this appears to be really the case, the police have no right to take it out of his possession for safer custody. See FINDING.

It may be as well to observe that no *examination of the person*, whether by a medical man or otherwise, for the purposes of evidence, is permissible, without the assent of the accused, under any circumstances whatever. A Justice cannot order it, and any person acting in this manner does so at his own risk and responsibility. *Agnew v. Jobson*, 13 Cox, C.C. 625.

Evidence of Police-constables, see page 182.

'CONTAGIOUS DISEASES (ANIMALS) ACT, 1878.'

All previous legislation upon the above subject is repealed by this important Act, which may be assumed to be in the hands of most people who are directly interested in its operation. We shall accordingly content ourselves with an outline of its principal provisions, touching only upon those which relate exclusively to England. Its leading principle is to entrust the virtual control of the matter to the discretion of the Privy Council. It forms the framework upon which they may hang their 'Orders,' each of which is to take effect as if it had been specially enacted. Every such Order must be announced in the *London Gazette*, and published by the Local Authority, to whom it is sent, in some local newspaper.

The 'Local Authorities' who are to execute and enforce both Act and Orders are, in counties, the Justices in Quarter Sessions; in the city of London, the Corporation; in the Metropolis, the Board of Works; in Municipal Boroughs, the Mayor, &c., in council; and in other Boroughs the Commissioners of Police. Expenses are to be defrayed out of the county, consolidated, or borough rates, as the case may be, and if necessary by the exercise of certain borrowing powers. Each local authority is to form and maintain a standing committee for the purposes of the Act, to whom it may delegate all or any of its powers, except that of making a rate. Each are to appoint Inspectors, veterinary and otherwise, and to furnish the Privy Council with such reports and information as the latter may from time to time require. An Inspector appointed as above has, within his own district, extensive powers of entry upon private land and premises. An Inspector appointed by the Privy Council has similar powers throughout England.

The police of every police district, county, and place are to enforce both Act and Orders. Any constable may without warrant stop, detain, and if necessary apprehend, any person found committing or suspected of being engaged in

committing an offence against the Act, and may stop and examine any suspected animal, vehicle, boat or thing to which such offence relates (41-2 Vict. c. 74, sec. 50). An Inspector has similar powers.

Disease, generally.—Every person having in his possession or under his charge an animal affected with ‘disease’ is, as far as practicable, to keep such animal separate from others, and immediately to give notice of the fact to a constable of the police district, county, or place, who is forthwith to give information to the proper authority (sec. 31). The word ‘disease’ in the Act includes the three following complaints (a).

(i.) **Cattle Plague.**—‘When it appears to an Inspector that cattle-plague exists, or has within ten days existed, in a cow-shed, field, or other place, he shall forthwith make and sign a declaration thereof.’ He must then serve notice of such declaration upon the occupier, and ‘thereupon that cow-shed, field, or other place, with all lands and buildings contiguous thereto in the same occupation, shall become and be a place infected with cattle-plague, subject to the determination and declaration of the Privy Council.’ He is at

(a) Under the ‘Animals Order, 15 Dec. 1879,’ Glanders and Farcy are declared to be diseases, within the Act, and are dealt with accordingly. It is a distinct offence (Order, sec. 52) to expose a diseased or suspected horse, ass, or mule in any ‘public or private place where animals or horses are commonly exposed for sale,’ or on any highway or public place. Penalty £20 (see page 141), and any officer of the Local Authority may seize the animal, and cause it, if actually diseased, to be forthwith slaughtered. Sheep-pox is also dealt with. Places may be declared infected, out of which no sheep may be moved alive; and the Local Authority must cause all infected animals to be slaughtered, and may order the slaughter of any which have been in contact with the disease. Compensation in respect of diseased animals is not to exceed 40s. Sheep-scab is to be treated by ‘dressing, dipping, or some other remedy.’ Typhoid fever in swine is declared to be a disease, for the purposes of certain sections of the Act. The Local Authority is to slaughter all animals thus affected, and to compensate the owner to an extent not exceeding 40s. per head.

liberty to serve a like notice upon all occupiers of property within one mile of the premises, with similar effect. It is then his business to inform the Privy Council and the Local Authority of what he has done, when the former will, if necessary, prescribe the limits of the place infected (sec. 10). The Privy Council may indeed, at any time, upon any evidence satisfactory to themselves, declare any place or 'area' to be infected (secs. 11, 12). No animal may be moved alive out of any infected place (Ord., Dec. 15, 1879, secs. 7, 8).

'The Privy Council shall cause to be slaughtered (i) All animals affected with cattle-plague; (ii) all animals being or having been in the same shed or stable, herd or flock, or in contact with an animal affected with cattle-plague;' and may, if they think fit in any case, cause to be slaughtered, (iii) 'all animals suspected of cattle-plague, or being in a place infected with cattle-plague,' or (iv) 'in such parts of an area infected with cattle-plague as are not comprised in a place infected,' (sec. 15).

Compensation is payable by the Privy Council, out of money provided by Parliament, for animals slaughtered as above: viz., one-half the value of an animal infected, immediately before attack (compensation in no case to exceed £20); in every other case, the value of the animal before slaughter—not over £40 (sec. 15). Special rules with reference to the slaughter, burial, and compensation for infected or suspected animals generally will be found at sec. 30, and see Order, sec. 55. In this, as in other cases of disease, provision is made for declaring an infected place free from infection, so soon as the ban may be safely dispensed with.

(ii.) **Pleuro-pneumonia.**—When it appears to an Inspector of a Local Authority that this disease exists, or has within fifty-six days existed, in a cow-shed, field, or other place, he is to make and sign a declaration thereof. He must serve notice of such declaration upon the occupier, and thereupon that cow-shed, &c., becomes a place infected with pleuro-pneumonia, subject to the determination and declaration of

the Local Authority, who may prescribe the limits of the infected place, and must forthwith report proceedings to the Privy Council, who may declare an 'area' to be infected and make all necessary orders (sec. 16—20 and Sched. 3). 'A Local Authority shall cause all cattle affected with pleuro-pneumonia to be slaughtered within two days after the existence of the disease is known to them,' and may 'cause any cattle being, or having been, in the same shed or herd, or in contact with cattle affected with pleuro-pneumonia to be slaughtered.'

Compensation is payable by the local authority, out of the local rate, for animals slaughtered as above: viz., three-fourths of the value of an animal affected, immediately before attack (in no case to exceed £30); in every other case the value of the animal before slaughter, not over £40 (sec. 21).

(iii.) **Foot and Mouth Disease.**—The provisions applicable to this complaint are substantially similar to those in (ii.), reading 'ten' days instead of fifty-six. There is, however, no compulsory slaughter (secs. 22, 26, and sched. 4).

Foreign Animals.—Amid the multitude of matters respecting which the Privy Council are by the Act invited to make order, stands the landing of foreign animals (sec. 35); and the regulation of ports of arrival (sec. 36). Foreign animals, generally, may be landed only at a part of a port defined for that purpose, and called a 'foreign animals' wharf,' from which they must not be removed alive. Animals intended for exhibition, or other exceptional purpose, may be landed at a part of a port called a 'foreign animals' quarantine station,' under certain specified rules (sched. 5). The Privy Council, however, may by general or special order allow animals imported from certain countries, which they may consider non-dangerous, to be landed without being subject to slaughter or quarantine (sched. 5, part iv.). As to this portion of the subject, see the Amending Act, 47-8 Vict. c. 13.

Offences and Proceedings.—Every offence against the Act renders the offender liable to a penalty not exceeding £20 ; or, if in respect of more than four animals, not exceeding £5 for each ; or if in relation to carcases, fodder, &c. (exclusive of animals) not exceeding £10 in respect of each half-ton in weight after the first half-ton, in addition to the original penalty of £20 (sec. 60). Acting without a licence in cases where a licence is required, digging up buried carcases, and certain other flagrant offences render him liable to two months' imprisonment without the option of a fine (sec. 62). For an enumeration of offences, see sections 61, 62 ; and as to unlawful shipping or landing, sec. 65. Knowledge of the existence of disease is, *prima facie*, to be assumed as against the owner, or person in charge (sec. 66). Proceedings before two Justices. A defendant may give evidence on his own behalf (*ib.*). Offences may be dealt with either in the place where committed, or in any place where the person complained of happens to be. Penalties recoverable by distress. One-half or less, as the court may think fit, to the person proceeding for the same ; the rest as in ordinary cases, see page 20 (*ib.*). Appeal to General or Quarter Sessions (see page 73) by 'any person who thinks himself aggrieved by the dismissal of a complaint, or by any determination or adjudication of a Court of Summary Jurisdiction under this Act.'

CORONER. A coroner can only hold his inquest *super visum corporis* : *i.e.*, the dead body, or some portion of it, must have been found ; and he must hold it where the remains lie dead, no matter where the death took place. An inquest is generally held (1) in case of death by violence, accident, or misadventure ; (2) where the death is sudden, or the cause doubtful ; (3) where it occurs in a prison or lunatic asylum. The jury may consist of any number of persons, but twelve at least must agree to the verdict.

Should the person accused or suspected of having caused the death be, as frequently happens, in custody of the police, the Coroner has no right to require that he should be brought before him. The Secretary of State has power, upon proper application, to direct a person in custody to be thus produced for the purpose of being examined as a witness ; but he has no power to order him to be taken before the Coroner for any other purpose whatsoever.

Where the person accused or suspected is at large at the time of the inquest, the Coroner, after his jury have given their verdict, may issue a warrant for his apprehension. This warrant will be executed by the police, who should charge the prisoner before Justices. By this means he will have the opportunity of calling witnesses in his own behalf, who may be bound over to repeat their evidence before a jury should he be committed. The Coroner has no authority to enforce the attendance of witnesses for this purpose ; although there is no question as to his independent power to commit for trial.

COSTS. In all cases of summary conviction upon Information, Justices may, in their discretion, award and order that the defendant shall pay to the prosecutor such costs as shall seem just and reasonable.

And in cases where the information is dismissed, they may in like manner award and order that the prosecutor shall pay similar costs to the defendant.

The sums so allowed *must, in all cases, be specified*, in the conviction, or order of dismissal. They are recoverable in the same manner, and under the same warrants as any penalty adjudged to be paid by such conviction ; or, if no penalty or sum is to be thereby recovered, then by distress, or in default, by imprisonment, with or without hard labour for a period proportionate to the amount, as fixed by Scale : see Jervis' Act (2), secs. 18, 26, and SUMMARY JURISDICTION (7).

Costs under an Order (see Preliminary Notes, Ch. VI.),

must be specified in like manner ; but when they are awarded, either to claimant or defendant, in respect of a sum claimed to be due and recoverable upon Complaint, and not upon Information, they are to be deemed (like the principal sum) a mere civil debt (Summary Jurisdiction Act, sec. 6), payment of which can only be enforced in manner explained at page 45.

Costs thus ordered may include not only the cost of the summons, &c., but the expense of witnesses, and a solicitor's fee, where the employment of professional assistance seems to have been justifiable. It will be observed that not only must a prosecutor's or complainant's costs be specified in the conviction or order, but that, *unless such conviction or order be made*, there is no power to give him costs at all. As regards costs where the fine imposed does not exceed 5*s.*, see SUMMARY JURISDICTION (3). See also, as to a prosecutor's liability in respect of costs, CLERKS TO JUSTICES.

Within the Metropolitan Police District (see title) Justices are expressly authorized to award reasonable compensation, not exceeding £10, to a complainant injured either in person or property, in addition to any penalty incurred under 2 & 3 Vict. c. 47, s. 62. They may give costs to either side at their own discretion, and may further award amends, not exceeding £5, to be paid by any informant to a defendant for his loss of time and expenses, where there was no sufficient ground for instituting the charge (2 & 3 Vict. c. 71, secs. 31, 32).

Indictable Offences.—In all cases in which a person is committed for felony, the court before which he is tried is empowered to allow the whole of the costs of the prosecution, including compensation for trouble and loss of time (7 Geo. IV. c. 64, s. 22). The same rule extends to the case of most indictable misdemeanours (*ib.* sec. 23, and 14 & 15 Vict. c. 55, ss. 1, 2, 3). The expenses of witnesses called by the accused may be allowed as part of the costs of the prosecution (30-1 Vict. c. 35, s. 5). The above sums are

payable in the first instance by the treasurer of the county, &c., who is ultimately repaid out of the public treasury.

Costs of the preliminary examination before a Justice of any person charged with felony, or with any misdemeanour as above, are payable to the prosecutor and his witnesses upon the certificate of such Justice, who will allow a reasonable sum, according to a fixed scale. Payment is made upon an order of the court before which the prisoner is tried.

Should the accused be discharged upon such preliminary examination, the Justice, if of opinion that the charge was made *bonâ fide*, and upon reasonable grounds, may grant a similar certificate, to be laid before Quarter Sessions, who are at liberty to allow the amount and cause the same to be paid by the proper officer (29 & 30 Vict. c. 52).

As regards costs in the case of indictable offences disposed of summarily, see Chapter V., page 41.

CRUELTY TO ANIMALS. Few Acts require to be administered with more judgment and discrimination than the 12 & 13 Vict. c. 92. Cruelty is the offence provided against; cruelty either active and intentional, or the result of stolid and selfish indifference to animal suffering. Flogging or over-driving a horse are among its common instances. In the first case, it is often a mistake to punish, as is constantly done, for a few hasty blows. Two words of temperate remonstrance, especially from a man with a stable of his own, would cause the offender to admit that he was in the wrong, and make him careful afterwards. Rough language and a fine will send him away indignant at the interference and punishment, with all his worst passions on fire, and the unlucky animal at his mercy directly it is once round the corner. Over-driving is a more deliberate offence; and still worse, the only too common case of animals worked when from sores or lameness they are actually unfit to move. Here the servant must not of necessity be made the scape-goat. It is easy to say that the man ought to have known

better than to take the horse out, but it is too much to expect a carter always to have the courage of his opinions. Society may tell him to argue the point with his employer. But society will not find him another berth, if the latter decline controversy and discharge the talkative rascal upon the spot. Send for the master, and ascertain if possible, and without sparing time or trouble, upon whom the blame really lies.

There is no need to speak of cases where cruelty is practised from sheer pleasure in giving pain, or in brutal and reckless fashion. There is no question here of the indulgence possible in the case of a rash blow. On the other hand, one must resolutely discountenance the morbid sensibility which winces at the sight of a stain of blood and would render penal the use of spurs. The Society which bears the name of this Act has done good service. But we should recollect that the ever ready agents of an association which appeals for public support upon the score of its activity, as evinced by a regularly published list of 'convictions,' are not likely to err through lack of zeal. The fact that a Justice is a subscribing member does not *per se* disqualify him from acting in the case of a prosecution directed by its secretary; *R. v. JJ. of Deal*, Q. B. Nov. 1881, 45 L. T. N. S. 439.

The question frequently arises, as to how far a man is answerable who permits an animal to remain in pain under particular circumstances. No one is bound to give the *coup de grace* to an animal which he has accidentally mutilated. But when once he deliberately begins to kill any creature within the Act, he is bound to kill outright, and not knock off in the middle. The case of *Powell v. Knight*, Q. B., May 22, 1878, seems at first sight opposed to this conclusion. But there, the defendant, after shooting a dog, gave information at once to the owner, and they both agreed that the dog was dead. The animal afterwards revived, and lived in pain for some hours. The owner was aware of its sufferings, and

might have put an end to them at any time. Under these circumstances it would have been too much to say that the defendant's original act (which was admittedly lawful) made it his special business to destroy the dog, and a conviction was quashed accordingly.

The word 'animal' in the above Act (as extended by 17 & 18 Vict. c. 60, s. 3) comprises every species of *domestic* animal, whether a quadruped or not. As to cutting the combs of cocks, see *Murphy v. Manning*, 46 L. J. M. C. 211.

Procedure.—Any constable upon his own view, or upon the information of any person who shall declare his name and abode, may apprehend any offender without warrant, and take possession of any animal or vehicle in his charge as security for any penalty, expenses, &c.; for which purpose a Justice may order the same to be sold. Complaints are to be made within one month, and information in writing is dispensed with. One Justice may convict (with limited power of punishment, see SUMMARY JURISDICTION, 4).

On non-payment of any penalty, or compensation, with costs, within such period as a Justice may direct, offender may be committed with or without hard labour, according to Scale page 428. Or, if conviction take place before *two* Justices or a police magistrate of the metropolis, the court, instead of imposing a fine, may commit for three months, with or without hard labour, (sec. 18). Penalty, half to overseers of the parish, half, with full costs, to prosecutor, or as the Justice shall think fit. On complaint against a driver, the Justice may summon the owner to produce him; and, in default, adjudge payment by the owner of any penalty, &c., (sec. 22). Appeal to General or Quarter Sessions (see page 73), if sum adjudged to be paid exceed £2, exclusive of costs, or if imprisonment be ordered.

OFFENCES.

[See, if necessary, note on Summary Jurisdiction.]

1. (Sec. 2). Cruelly beating; ill-treating, over-driving,

over-riding, abusing or torturing—or *causing* to be beaten, &c., any animal [£5 ; or, *if before two Justices*, imprisonment, in lieu of fine, with or without hard labour, for not exceeding three months].

2. (Sec. 3). Keeping or using, or permitting to be used, any place for the purpose of fighting or baiting any animal [£5 per day].
3. (*Ib.*). Encouraging or assisting at such fighting, baiting, &c. [£5].
4. (Sec. 4). By cruelly beating, &c. (as above), doing any damage to such animal, or causing damage to any person or property [compensation up to £10, besides any penalty for the beating, &c.].
5. (Sec. 5). Neglecting to feed, &c., impounded animal, [20s.]. This, however, applies to the person who impounds, or causes to be impounded, not to the ‘pound keeper,’ *Dargan v. Davies*, Feb. 2, 1877, 2 Q. B. D. 118 ; and see 17 & 18 Vict. c. 60.
6. (Sec. 12). Conveying or sending in or upon any vehicle any animal in such manner, or position, as to subject it to unnecessary suffering [£3].
7. (Sec. 20). Obstructing constable, &c. [£5].
8. (Sec. 22). Owner of carriage, &c., not producing driver, [40s., as often as summoned, until driver be produced].

HORSE-SLAUGHTERING OFFENCES.

9. (12 & 13 Vict. c. 92, s. 8). Neglecting to cut off the mane of any horse immediately upon its being brought in—not killing it within three days—or not feeding it properly in the meanwhile [£5].
10. (Sec. 9). Working any horse brought in for slaughter [40s. per day].

CUSTOMS. The rules and regulations which apply to this immense branch of Revenue have been collected into a

single code by the Consolidation Act of 39 & 40 Vict. c. 36. The repression of smuggling is, of course, one of the main objects of all legislation upon this subject. We will take the following as a sample from 44 Vict. c. 12, sec. 12, which was substituted in 1881 for section 184 of the above Act:—

Any officer of Customs may search any person, on board any ship or boat, within the limits of any port in the United Kingdom, or any person who shall have landed from any ship or boat, provided such officer have good reason to suppose that such person is carrying or has prohibited goods about his person. Staving, breaking, or destroying any goods to prevent the seizure thereof, or assaulting any officer of Customs in the execution of his duty, &c., render the offender liable to a fine of £100. Before the above right of search can be exercised, the suspected person may (sec. 185) demand to be taken without delay before a Justice, or before a superior officer of Customs, who, if he see reasonable cause, may direct that he be searched. But ‘if any officer shall without reasonable grounds cause any person to be searched, such officer shall forfeit and pay a sum not exceeding £10.’ If any passenger or person on board, or who shall have landed from such ship or boat, shall upon being questioned by any officer of Customs whether he has any foreign goods upon his person, or in his possession, or among his baggage, deny the same, and any such goods be discovered, the latter are not only forfeited, but the offender is liable to a fine of £100, or treble their value, at the option of the Commissioners of Customs.

A summons may be issued in respect of any offence under the above Act at any time within three years after its commission. As regards summary proceedings in general, see *Excise*.

DETAINING PROPERTY. Upon complaint of any person claiming to be entitled to the property or possession of goods detained by any other person within the Metropolitan Police District, not being of greater value than £15,

Justices may order delivery to the owner, with due regard to any charge or lien which may exist as to the same. See 2 & 3 Vict. c. 71, sec. 40 ; and LIEN.

DISORDERLY CONDUCT. There is no difficulty in punishing people who are 'drunk and disorderly ;' but sometimes people are perverse enough to be disorderly without being drunk. Within the Metropolitan Police District, any constable may apprehend without warrant 'all loose, idle, and disorderly persons, whom he shall find disturbing the public peace,' or between sunset and 8 a.m. loitering, and not giving a good account of themselves, (2 & 3 Vict. c. 47, s. 64). There is no analogous provision in the POLICE OF TOWNS' CLAUSES (see title) unless the person charged be guilty of obscene language, (sec. 28) ; or drunk, (sec. 29) ; but in Boroughs any constable on duty may apprehend idle and disorderly persons disturbing the public peace, (Municipal Corporations Act, 1882, sec. 193).

Constables are bound to maintain order in public thoroughfares ; and any act, especially at night, which either amounts to, or is in point of fact provoking an immediate breach of the peace may be cut short by a judicious arrest. But there is no sweeping clause embracing every act of annoyance or disorder short of this point which can possibly be committed ; and no misbehaviour can be summarily dealt with which does not fall fairly within the provisions of some particular statute. When once the legislature has taken the trouble to frame a schedule of specific offences, we must not assume to interpolate others, merely because they may seem every bit as bad, and equally worthy of punishment. Thus under the Towns Police Clauses (4) it is an offence to rout a man up by ringing his door-bell or hammering at his knocker without reason. But it is just as provoking to batter at the shutters—for which there is no penalty. All that the legislature has *forbidden* is the wanton misuse of the ordinary signals attached to a front-door, which are necessarily left

exposed, and at the mercy of every one who passes the house. See MISCHIEF (*a*).

DISORDERLY HOUSES. Under the 25 Geo. II. c. 36, any two neighbours, 'paying scot or bearing lot,' might obtain a warrant against the owner or ostensible owner of a brothel, gaming-house, &c., and cause him to be bound over by a Justice, without more ado, to answer an indictment at the sessions. This rough and ready course is now modified by the operation of the Vexatious Indictment Act, which appears to bring the accused within the provisions of Jervis' Act; and the Justice, before binding him over, should require evidence in support of the charge, and hear the defendant's answer, as in the case of any other indictable offence; subject to the provision contained in the Vexatious Indictment Act, sec. 2: see INDICTMENT. The offence is punishable as a misdemeanour, *i.e.*, by fine or imprisonment (with or without hard labour), or both, at the discretion of the court. See MUSIC AND DANCING; and, within Metropolitan Police District, 2 & 3 Vict. c. 47, ss. 44, 47. See also SUNDAY.

DISTRESS. As regards Distress generally, see pages 18, 19. Under the Summary Jurisdiction Act, sec. 21, (1) the issue of a distress warrant, consequent either upon a conviction or an order, may be postponed until such time, and upon such conditions, as the court may think just. (2) Wearing apparel and bedding, and (to the value of £5) tools and implements of trade, cannot be distrained.

(*a*) A householder in Middlesex obtained a conviction against a bill-sticker under the 2 & 3 Vict. c. 47 (page 349) for placarding his garden wall without leave. Next morning he awoke to find that the indignant and industrious man had returned in the night and papered up his dining-room windows with the very largest posters. This would have upset a saint. So, after a twilight breakfast, he hurried off for another summons, trusting that his county would avenge him fourfold. But the narrow space between his front railings and the house was no 'public thoroughfare.' And the clerk shook his head.

(3) Where a person is adjudged upon conviction, or, in the case of a sum not a 'civil debt,' upon order, to pay a sum of money, and in default of payment a warrant of distress is authorised to be issued, immediate imprisonment, in place of distress, may be directed, when the latter would plainly be ineffectual, or more injurious than imprisonment.

(4) Where any such sum has been *reduced* by insufficient distress, or part payment, a defendant is only to be imprisoned in respect of, and in proportion to, the *unsatisfied balance*; and the alternative term, originally imposed, is, if necessary, to be revoked. As regards the execution of a warrant of distress, see sec. 43. It would appear that there is no power to break open doors for this purpose, unless where the object is to recover a penalty which goes to the Crown. An English warrant of distress may now be endorsed and executed in Scotland, 'as if it were a Scotch warrant of poinding and sale,' see page 430.

Any person taking or retaining from the produce of goods sold for payment of rent, taxes, &c., not exceeding £20, any greater costs and charges than those mentioned in the schedule to 57 Geo. III. c. 93, or making any charge for matters not really done, forfeits treble the amount unlawfully taken, with costs. See, within the Metropolitan Police District, 2 & 3 Vict. c. 71, sec. 39.

See also TENANT REMOVING GOODS.

DOGS. It is remarkable that 'hawk and hound,' those inseparable companions in the country life of our ancestors, should have been regarded with such widely different favour by the founders of the Common Law. To steal a reclaimed hawk has been felony from unrecorded time; while, until no very remote period, the owner of a stolen dog was left to the tame and expensive consolation of a civil action. His property in the animal was stigmatised as a 'base' ownership, deserving only of the contemptuous indulgence accorded to people who find amusement in keeping owls and white mice.

At any rate it was not considered such as to call for criminal punishment upon anybody who chose to infringe it. In point of fact, the disadvantage, as compared with a horse or a bullock, of not having been born a 'chattel,' still clings to the dog; since, owing to his having no status as such, an indictment will not lie under 24-5 Vict. c. 96, s. 88, for obtaining him by 'false pretences.' For the same reason, he is excluded from the benefit of the third section of the Act; and the person to whom a dog has been lent or entrusted, is not guilty of larceny, or otherwise liable to criminal punishment, if he sell or give him away. Otherwise, no animal has been more carefully protected by modern legislation, in which his constitutional propensities and misfortunes are equally remembered.

Stealing dogs.—By 24-5 Vict. c. 96, s. 18, 'Whosoever shall steal any dog,' is liable, on conviction before two Justices, to imprisonment with or without hard labour for not exceeding six months, or to forfeiture, *above the value of the dog*, of not exceeding £20, with imprisonment as per scale (see page 428) in default. Second offence, indictable misdemeanour, [18 m.]. And by sec. 19, 'Whosoever shall unlawfully have in his possession, or on his premises, any stolen dog, or the skin of any stolen dog, knowing such dog to have been stolen, or such skin to be the skin of a stolen dog,' is liable, on like conviction, to a penalty not exceeding £20, with similar alternative. The next section provides that, 'Any person corruptly taking any money or reward, directly or indirectly, under pretence or on account of aiding any person to recover any dog which shall have been stolen, or which shall be in the possession of any person not being the owner thereof, shall be guilty of a misdemeanour,' [18 m.].

Section 22 is supposed to authorise any Justice to restore a stolen dog to its owner. The language, however, is involved and mysterious, and has not as yet been judicially dissected.

Killing or wounding dogs.—By 24-5 Vict. c. 97, s. 41,

'Whosoever shall unlawfully and maliciously kill, maim, or wound any dog' is liable, upon conviction before one Justice, to punishment as for stealing, the forfeiture on maiming, &c., being over and above the damage done to the animal. The value or damage, whether in case of stealing or injury, of course goes to the party aggrieved—the penalty to the county treasurer, &c.

Sheep-biting and mischievous dogs.—Under the 28-9 Vict. c. 60 (secs. 1, 2), 'the owner of every dog shall be liable in damages for injury done to any cattle [horses] or sheep by his dog; and it shall not be necessary to show a previous mischievous propensity in such dog, or the owner's knowledge of such previous propensity, or that the injury was attributable to neglect on the part of such owner.' Damages, if not exceeding £5, recoverable upon complaint (see page 43) before any Justice or Justices in petty sessions. Occupier of premises where dog was kept, or permitted to live at the time, to be *primâ facie* deemed the owner.

It is permissible to place dog-spears, traps, and the like, upon one's land in the interests of game, &c.; but nobody is justified in shooting a dog simply as a trespasser. There must be some immediate and sufficient reason for the step, as when the animal is in actual pursuit of hares, sheep, fowls, &c. Upon this point no safe or certain rule need be expected. The excuse must be that of emergency. A notice that 'all dogs found trespassing will be destroyed' is of no avail. See also page 345.

Dangerous dogs.—Under the Towns Police Clauses Act s. 28, (see POLICE OF TOWNS), 'Every person who in any street, to the annoyance or danger of the residents or passengers, suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog to attack, worry, or put in fear any person or animal' is liable, upon conviction before one Justice, to a penalty not exceeding 40s. [now 20s. unless two Justices be present]; or, in default, to imprisonment not exceeding 14 days, *without* hard labour. Within the boun-

daries of the Metropolitan Police District (see title), an offender is liable, in addition to such penalty, to make amends for any damage to person or property thus occasioned, to the extent of £10 (2 & 3 Vict. c. 47, ss. 54 (2) 62).

‘Any court of summary jurisdiction (*i.e.*, two Justices or a Stipendiary Magistrate,) may take cognisance of any Complaint that a dog is dangerous and not kept under proper control,’ and, if such appears to be the case, make an order for the dog to be kept by the owner under proper control or destroyed. Penalty, recoverable before two Justices by distress, not exceeding 20s. for every day’s default (34-5 Vict. c. 56, s. 2). Justices may in their discretion direct that the dog shall be destroyed at once, without giving any option to the owner, *Pickering v. Marsh*, 43 L. J. M. C. 143.

Stray dogs.—Any constable may take possession of any dog, which he has reason to suppose to be savage or dangerous, straying on any highway, street, or place of public resort, and not under the control of any person; and may detain it until claimed and all expenses paid. A letter is to be sent to the owner if known. After three clear days when the owner is not known, or five when he is known, the dog, if unclaimed, may be sold or destroyed. Sale money to go to the local rate. Dog while detained to be properly fed at expense of same (34-5 Vict. c. 56, ss. 1, 5).

Mad dogs.—The Town Council in Municipal Boroughs, and, elsewhere, (except in certain specified localities) Justices in petty sessions, may, if a mad dog, or dog suspected of being mad, be found within their jurisdiction, make order with reference to dogs not under control. Penalty for contravention 20s. (34-5 Vict. c. 56, s. 3). And, by the Towns Police Clauses Act, *suprà*, s. 28, Every person who in any street, &c., suffers a dog of which he is owner to go at large, knowing, or having reasonable ground for believing, it to be in a rabid state, or to have been bitten, &c., or who after public notice directing dogs to be confined, suffers any dog to be at large, is liable to a penalty not exceeding

40s., or in default to 14 days *without* hard labour. See also, within the Metropolitan Police District, 2 & 3 Vict. c. 47, sec. 61.

Dogs drawing.—Using any dog for drawing, or helping to draw, any cart, carriage, truck or barrow on any public highway exposes the offender to a penalty not exceeding 40s. (£5 on second conviction), recoverable under the ‘Cruelty to Animals Act,’ 17 & 18 Vict. c. 60, s. 2.

Dog licences.—The Excise licence for dogs, which previously stood at 12s., was, in the year 1867, reduced to 5s., and this, in 1878, was again altered to 7s. 6d. All licences, at whatever period granted, expire on the 31st of December following. An Excise penalty of £5, recoverable before two Justices in petty sessions, and mitigable at their discretion to not less than one-fourth, is imposed by the 30-1 Vict. c. 5, sec. 8, upon any person keeping a dog (over six months old) without having a licence in force, and for each such dog kept by any person in excess of the number which he may be licenced to keep.

This penalty, after a variety of changes in the proceedings incident to its recovery, may now be enforced at the instance either of the Excise or Police authorities, according to the ordinary rules of Summary Jurisdiction, including the power of unlimited mitigation in the case of a first offence, and the application of the scale of imprisonment (without hard labour) in default of distress.

By 41 Vict. c. 15, s. 19, proof of the dog’s age is thrown upon the defendant. By sec. 21, blind men’s dogs are exempted from duty. And by sec. 22, provision is made for exempting shepherds’ dogs, up to a certain number, if protected by a Certificate founded upon a proper Declaration.

The Act of 1867 provides that ‘every person in whose custody, charge, or possession, or in whose house or premises any dog shall be found or seen, shall be deemed to be the person who shall keep such dog, *unless the contrary be proved.*’

It is too late to take out a licence after the officer of Excise or police constable has discovered the existence of a previously unlicensed dog. Even if the licence be taken out afterwards upon the same day, it will be no protection against the penalty, *Campbell v. Strangeways*, Nov. 23, 1877, 3 C. P. D. 105. The licence, in fact, is now stamped with the hour as well as day of issue. Any person refusing to produce his licence to any officer of Excise or police constable is liable to a penalty of £5. This provision is incidental to the privilege of taking out a dog licence at any place.

By a recent Order of the Secretary of State, no police prosecutions are to be instituted in the month of January, so that a reasonable time will be afforded to the owners of dogs to renew their licences.

No licence is necessary in respect of hounds under the age of 12 months, which have not been entered in, or used with, any pack.

DRIVING AND RIDING. Every person driving or riding in a public thoroughfare is bound to possess a reasonable amount of skill and to exercise a reasonable amount of caution. Every man, said Sydney Smith, *knows* that he can drive a gig. But every man does not know that if he leave that gig unattended at a door, and somebody passing chooses to strike and start the horse, he will himself be personally answerable for the consequences, *Illidge v. Goodwin*, 5 C. & P. 190.

Upon precisely the same principle stands the rule that if a man, at the time of causing an accident, was riding or driving at an improper pace, with regard to the surrounding circumstances, he will be criminally responsible. And the charge is not answered by showing want of common care upon the part of the person injured, or even that he also was proceeding at a dangerous rate, although upon the latter supposition he might be punishable for his own misconduct.

The offences below fall, generally speaking, within the provisions of the Turnpike Act, 3 Geo. IV. c. 126, the

Highway Act, 5 & 6 Will. IV. c. 50, and the Town Police Clauses Act, 10 & 11 Vict. c. 89. The same offence, it may be remarked, may entail very different results according as it may happen to have been committed on a turnpike-road, upon the ordinary highway, or in a district within which the Town Police Clauses Act is in force. Driving on the wrong side of the way, for instance, is punishable with a fine of £5 in the first case, of £10 in the second, while in the third, there is the chance of 14 days' imprisonment without the option of a fine. However, except as regards the special point of payment of toll, the rules as to riding and driving proclaimed in the two earlier Acts are similar in character, and to avoid prolixity we will speak chiefly of the Acts more frequently appealed to—those of William and Victoria.

The following are offences under the Highway Act of Will. IV. secs. 77 and 78, cognisable before two Justices, under Jervis' Act. It is to be observed that, under the latter section, any *driver* offending may be apprehended without warrant by any person who shall see the offence committed and conveyed before *any Justice*, and if he refuse to discover his name may be by him committed to prison for not exceeding three months with hard labour, or proceeded against without regard to his name. [See, however, Summary Jurisdiction Act, sec. 20 (page 5).] Considering that no difficulty between drivers ever yet took place in which each did not consider the other exclusively to blame, it is perhaps fortunate that this provision is not generally known. [The Turnpike Act above referred to contains a parallel clause with reference to offences corresponding with those numbered 3—6, 8—11 below.]

Penalties.—All the following offences, except 1 and 2 (to which the above arresting clause does not apply), 14 and 15, are punishable by a fine not exceeding £10 if the driver be the owner of the cart, &c., otherwise not exceeding £5. In either case with imprisonment and hard labour for not ex-

ceeding six weeks in default of payment, subject to scale, see SUMMARY JURISDICTION. Penalties to Surveyor (half to informer, if any). Appeal when sum adjudged to be paid exceeds £5. [Penalties under the Turnpike Act are recoverable before one Justice. Appeal when over 40s.]

OFFENCES.

[Penalties in (1) (2) (14) and (15) recoverable by distress].

1. Owner of 'waggon, cart, or other such carriage,' (see *Danby v. Hunter*, Nov. 28, 1879, 5 Q. B. D. 20), using or allowing it to be used, without his name being painted thereon as required, or painting fictitious name [40s.]. See offence (8) *infra*, and TAXED CARTS.
2. Acting as driver of two carts, drawn by one horse each, horse of hinder cart not being attached by rein (not over 4 feet long) to back of foremost [20s.].
3. Riding on waggon, &c., or horse drawing the same without some one on foot or horseback to guide them (except carriages driven with reins, and conducted by person holding reins of all the horses).
4. By negligence or wilful misbehaviour causing hurt or damage to any person, horse, cattle, or goods, conveyed in any carriage upon the highway.
5. Quitting road for other side of the hedge, &c.
6. Being at such distance from carriage, or in such situation, as not to have the direction or government of horses, &c.
7. Leaving cart, &c., so as to obstruct passage.
8. Driving any waggon, &c., not having owner's name painted thereon, and refusing to tell such name.
9. Not keeping waggon, &c., on near side of road when meeting any other waggon, &c.
10. Wilfully preventing any person from passing.
11. Hindering free passage of person, waggon, horses, &c.
12. Not keeping waggon, &c., on near side for the purpose of allowing such free passage.

13. Riding any horse or beast, or driving any sort of carriage, furiously, so as to endanger the life or limb of any passenger. Furious riding, as well as driving, is punishable under this clause, notwithstanding that the penal part of the enactment speaks of drivers only, *Williams v. Evans*, 41 J. P. 151. In cases of actual bodily harm caused by 'wanton or furious driving, or racing, or other wilful misconduct, or by wilful neglect,' Justices may, instead of convicting summarily, commit for trial under the 24-5 Vict. c. 100, s. 35. Punishment not exceeding two years' hard labour.
14. The following are 'nuisances' under sec. 72. Wilfully riding on any footpath, by the side of any road made for use of foot passengers, or leading or driving any horse, cattle or carriage of any description, or any truck or sledge upon such path [40s.].
15. Under the Turnpike Act (sec. 41), any person with any horse or carriage going off any turnpike road with intent to evade toll—or fraudulently or forcibly passing through any toll-gate—or leaving upon the road any horse or carriage to avoid toll, &c., &c., is liable to a penalty not exceeding £5.

The 10 & 11 Vict. c. 89 contains various provisions with respect to driving and riding, applicable wherever that Act is in force. See POLICE OF TOWNS CLAUSES ACT for procedure, &c. By sec. 28, a penalty of 40s., recoverable by distress, or, at the discretion of the court, 14 days, without hard labour, is imposed upon any person who having charge of any waggon or carriage rides on shafts, or who, without having reins and holding same, rides on such waggon, &c., or on any animal drawing, or is at such a distance as not to have due control over every such animal, or who does not on meeting any other carriage keep his waggon, &c., to the near side, or who, in passing any other carriage, &c., does not keep his waggon, &c., on the off side (cases of actual necessity, &c., excepted),

or who, by obstructing the street, wilfully prevents any person or carriage from passing him—or, at one time, drives more than two carts or waggons, or, if driving two, has not the halter of the horse in the last securely fastened to the back of the first, or has such halter of a greater length than four feet—or who rides or drives furiously any horse or carriage or drives furiously any cattle.

Or who causes any public carriage, sledge, truck, or barrow, with or without horses, to stand longer than necessary for loading or unloading, &c.—or who by means of any cart, carriage, barrow, &c., or other means, wilfully interrupts any public crossing or obstructs any public foot path or thoroughfare—or who causes any tree, timber, &c., to be drawn upon any carriage without means of safely guiding the same—or who leads or rides any horse, &c., or draws or drives any cart, carriage, barrow, &c., upon any footway, or fastens any horse or other animal so that it stands across or upon any footway.

Person drunk when in charge of horse, carriage, &c., in public place [40s. or one month], see DRUNKENNESS.

Over-driving horse, &c., see CRUELTY TO ANIMALS. See also BICYCLES, and as to offences within the Metropolitan Police District, 2 & 3 Vict. c. 47, sec. 54.

DRUGGING ANIMALS. Any person (other than the owner) administering, without reasonable excuse, 'to any horse, cattle, or domestic animal, any poisonous or injurious drug or substance,' is liable, upon conviction before two Justices, to a penalty of £5, or, in their discretion, to one month's hard labour (39 Vict. c. 13). This does not exempt the offender from punishment under any other Act, provided he be not twice punished for the same offence.

DRUNKENNESS. To what an extent an intoxicated person remains a morally responsible agent was a question scarcely solved by Paley when, writing as a senior-wrangler

as well as a philosopher, he dismissed it with a reference to the rule-of-three. The real difficulty, however, lies in deciding how far he ought to be held accountable *at law* for acts committed in what, for present purposes, we will assume to be complete unconsciousness of their real nature. How ought we to deal with him next morning, when he stands before us in his sober senses? and what is to be our judicial rule as regards the punishment of deeds which he then for the first time learns that he has committed? It is not an easy question if we fairly face it. It is in the resolution to do wrong, whether gradually or suddenly formed, that we discern the criminality of an act. How could you *bring yourself* to do it, is the question which either in tenderness or indignation we perpetually ask. But here the nature of the act was never considered—never balanced in the scales of conscience. We cannot seriously get rid of this fact by magnifying the drunkard's original weakness until it becomes big and black enough to absorb all the sins of the decalogue. We can scarcely say, in earnest, that every man who commits an offence while drunk should be compelled to open the statute-book, and be punished with the punishment upon which he first lays finger. Yet this is the rule proposed by those who hold the doctrine in its integrity that drunkenness is no excuse for crime.

Take a couple of charges which occur while these lines are being written. The experience of most Justices will supply such instances in abundance. We print them merely as samples of the every-day question; as 'cases' upon which the reader will perhaps deliver his own judgment.

A well-to-do tradesman in the town is brought up upon a charge of stealing shoes. He had been drinking freely—there is no doubt about that; and the whole surroundings of the performance went to show that it was under the influence of those unlucky bumpers that he sallied out into the street with one strange impulse in his head. However, he began by pocketing a pair from the counter of a shop. The articles

were missed, and the constable sent in pursuit found him in the act of craftily cutting down a second pair from the door-post of a bootmaker in the same street. Is this a case for imprisonment, or committal for trial? Is that man really a thief? But, if you make allowances here, how about the pot-boy whose case is called on next? He was not at all a bad lad in general. But he came home tipsy last night, and has seriously hurt the officer who was sent for to remove him from the premises. This morning he declares, very probably with truth, that he has not the faintest recollection of the matter. He is horribly sorry. He has listened to the tale of the shoes with indescribable interest; and hopes that, notwithstanding the constable's bandaged jaw, it may be remembered that he too had been beguiled by 'barley bree.'

There is the greatest difficulty in legislating upon the subject at all. A clause introduced into the earlier prints of the proposed Criminal Law Consolidation Code was struck out before the first reading. Perhaps, in the first place, a man who has by his own voluntary act placed his self-control in partial or entire abeyance, has no right to expect that we should construct a sliding-scale of responsibility for his benefit. Society suffers too much from people in this abnormal state; and they must be content with rough measure. Again, no legislation can take into account one feature of manifest importance, namely, the wide difference between the regular tavern-sot, who is always more or less drunk and ready to knock people about, and the man who becomes intoxicated, so to speak, by accident. There must obviously be a relaxing power somewhere. But we must waive our forfeit as matter of grace and not of right, and admit no other appeal than to the uncovenanted mercies of the Judge.

In a great number of cases, however, none of these questions arise. A man may commit a crime because he was drunk, and yet know all the time well enough what he was about. Again, in that very dangerous class of offences, drunkenness whilst in charge of carriages, engines, &c., a

habit of self-preservation induces us to warn people, by exemplary punishment, that they *must* contrive to keep sober while under that species of responsibility.

The question, however, occurs now and then, 'How drunk' must a man be before he falls legitimately within some of the penal clauses below? Due weight must be given to the expression 'found' drunk, in the first of these. On the other hand, when a person merely 'the worse for liquor' commits some offensive or improper act which is not punishable *per se*, it is quite fair to make him pay the penalty of intoxication. In the case noticed under INDECENCY, for instance, the man (who had 'been drinking') was told that his behaviour could only lead the court to the charitable conclusion that he was drunk at the time; while a fine of ten shillings completed the Q. E. D.

As regards persons found drunk in any public place, the police have no authority to arrest, but they may take the offender to the police-station for his own good, until he seems sober. They have, however, no power of restraining him after he is fit to be at large, and should proceed against him by information and summons. In many places a defendant is detained, as matter of course, until he can be taken before a Justice, and then marched through the streets in custody on that errand. It is probable that he could not be punished for an assault upon his escort, or for effecting his escape from the procession.

A public place, for the above purpose, includes a railway station. A publican has been held entitled to be drunk on his own premises *after they are closed*. 'It cannot be supposed that the legislature has put all publicans under the obligation to remain sober during the whole night,' *Lester v. Torrens*, June 6, 1877, 2 Q. B. D. 403; 41 J. P. 372. A person charged with being 'drunk and disorderly' cannot (it is said) be convicted of being simply drunk, or *vice versa*, the offences being distinct.

OFFENCES UNDER 35-6 VICT. c. 94.

N.B. It is important to remember that, in all the following cases, not only is the defendant entitled to be sworn as a witness, and give evidence on his own behalf, but his or her wife or husband may also be called (sec. 51). See also (if necessary) note on SUMMARY JURISDICTION.

1. (Sec. 12). 'Every person found drunk in any highway or other public place, whether a building or not, or on any licenced premises' is liable as follows:—

First offence	not exceeding 10s. or 7 days;
Second, within 12 months ,, ,,	20s. or 14 days;
Subsequent, within same ,, ,,	40s. or one month.

The periods of imprisonment above indicated are *in default of distress*. Hard labour may be ordered. One Justice may inflict a penalty up to 20s.

2. (*Ib.*). 'Every person who in any highway or other public place, whether a building or not, is guilty while drunk of riotous or disorderly behaviour,'

3. (*Ib.*). 'Or who is drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam-engine,'

4. (*Ib.*). 'Or who is drunk when in possession of any loaded firearms,'

may be apprehended by any person upon the spot. Penalty, recoverable before two Justices, as above, not exceeding 40s., or, at the discretion of the Court, imprisonment, with or without hard labour, for not exceeding one month.

5. (Sec. 13). **Licenced premises.**—'If any licenced person permits drunkenness, or any violent, quarrelsome, or riotous conduct, to take place on his premises, or sells any intoxicating liquor to any drunken person,' Penalty, first offence, not exceeding £10; subsequent offence, not exceeding £20. Distress. Two Justices. A landlord found drunk upon his own premises cannot be convicted under this section, see *Warden v. Tye*, Jan. 18, 1877, 2 C. P. D. 74; 41 J. P. 120.

6. (Sec. 18). 'Any licenced person may refuse to admit to, and may turn out of the premises . . . any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under this Act. And any such person who, upon being requested, in pursuance of this section, by such licenced person, his agent or servant, or any constable, to quit such premises, refuses or fails to do so, shall be liable to a penalty not exceeding £5 [with hard labour on imprisonment in default of distress] and all constables are required, on the demand of such licenced person, agent, or servant, to expel, or assist in expelling, every such person from such premises, and may use such force as may be required for that purpose.' Two Justices.

As regards engine-drivers, or railway servants, drunk on duty, see *RAILWAYS, Offences* (1). Postman drunk, 358 (2).

DYNAMITE. See 'EXPLOSIVE SUBSTANCES ACT, 1883,' Appendix XXI., page 473. No person may employ dynamite to kill fish in a public fishery, or within one marine league of the coast:—Penalty £20, or two months; 40-1 Vict. c. 65, extended by 41-2 Vict. c. 39, sec. 12, to all waters, public or private, within the limits of the 'Freshwater Fisheries Act, 1878.' See *FISHING, and EXPLOSIVES*. As to sending dynamite by any public conveyance or depositing it in any warehouse, &c., see 29-30 Vict. c. 69, sec. 3.

EDUCATION (ELEMENTARY). 'It shall be the duty of the parent of every child to cause such child to receive efficient elementary education in reading, writing, and arithmetic; and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided,' 39 & 40 Vict. c. 79, sec. 4 (1876). The word 'child' is defined by the Act (sec. 48) to mean a child between 5 and 14.

We shall confine our observations upon the present subject to those points in which the interference of Justices is required towards the attainment of the above results.

Under the Act just cited every person is liable to a penalty not exceeding 40s. who takes into his employment, or, being the parent, or *in loco parentis*, employs for the sake of gain, any child under the age of ten years, or a child who being of that age, and under fourteen, has not obtained a certificate of school-proiciency, or of previous due attendance at a certified efficient school (a) (see sec. 48), unless such child, being of the age of ten or upwards is employed, and attending school, in accordance with the Factory Act, or with some bye-law of the 'Local Authority,' (*i.e.*, the School-board, or School Attendance Committee), under the Education Acts (secs. 5, 6, 39, 47).

This rule is subject to certain exceptions, *e.g.*, in case there be no public elementary school within two miles of the child's residence, or the employment take place during holidays, or out of school-hours, &c.; and in the case of harvest-work specially allowed for (sec. 9).

'If the parent [including any person *in loco parentis*] of any child above the age of five years, who is under this Act prohibited from being taken into full-time employment, [or rather any such child who is prohibited either to a limited extent or generally from being taken into employment; see *Wynyard v. Toogood*, Appeal, Dec. 19, 1882, 52 L. J. M. C. 25] habitually and without reasonable excuse neglects to provide efficient elementary education for his child, or if any child is found habitually wandering, or not under proper control, or in the company of rogues,' &c., the 'Local Authority' after due warning to the parent, are to complain to a court of Summary Jurisdiction, who may order that

(a) The certificates thus required, in 1881 and hereafter, are (i.) a certificate of 250 attendances in not more than two schools during each year for five years; or (ii.) a certificate of proficiency under Standard IV., implying ability to read with intelligence a few lines of poetry, to write from leisurely dictation, and to work the elementary rules of compound arithmetic. But a higher standard *may* now be required under a bye-law, see page 168.

such child attend some certified school, to be selected by the parent, if he pleases, and to be named in the order (sec. 11) (a). In the event of non-compliance, the court, upon complaint made by the 'Local Authority,' may if it see fit impose a penalty upon the parent, not exceeding 5*s.* including costs. But if the parent satisfy the court that he has used all reasonable exertions in the matter, the court may, without inflicting a fine, order the child to be sent to a certified day Industrial School, (see sec. 16), or, if there be none suitable, to a certified Industrial School. The parent is liable to a fresh fine upon every subsequent complaint, at intervals of not less than two weeks (sec. 12).

Every child so sent to an Industrial School is to be deemed as sent under the Industrial Schools Act, (see title), and the parent is liable to contribute to his maintenance accordingly (sec. 12 and see 13, 14).

Any Justice may require, by summons, any parent or employer to produce before him a child required to attend school, under a penalty of 20*s.* (36-7 Vict. c. 86, s. 24).

We have already seen that a parent's conduct in neglecting to provide efficient elementary instruction for his child must be 'without reasonable excuse' in order to expose him to the operation of the Act. If he does not provide him with efficient instruction in some other way, he is bound *prima facie* to send him to school. Under section 11, however, he may plead, as 'a reasonable excuse, that there is not within two miles . . . from the residence of such child any public elementary school open which the child can attend; or that the absence of the child from school has been caused by sickness or any unavoidable cause.' In *Belper School Board Committee v. Bailey*, Ap. 1882, 51 L. J. M. C. 91, it was decided that these particular excuses are merely illustrative; and a parent who had done his best, under the circumstances,

(a) It would seem that no costs, as a rule, ought to be imposed upon parents, in respect of proceedings under this section. See Letter from the Home Office, 5 Mar. 1879, 43 J. P. 199.

to secure his child's regular attendance was held exempt from further responsibility. In a more recent case, *London School Board v. Duggan*, May, 1884, 53 L. J. M. C. 104, the child, a girl, was twelve and a half years of age. She was working in the second standard only, but could read and write sufficiently well. 'It is found as a fact,' said Stephen, J., 'that the child's earnings formed a considerable part of the family income, and were necessary to the support of the family; and I should need to be shown an enactment compelling me in the very clearest language to do so, before requiring a child to neglect its sacred duty towards its parents in order to take in some additional reading, writing and arithmetic, beyond such a *quantum* as this child already possessed. I think the magistrate was justified in holding that there was a reasonable excuse for the child's non-attendance at school, and in dismissing the summons accordingly.'

'Attending' school, it must be understood, implies effectual attendance, not mere physical presence at the school door; and it is of no avail to send a child without the necessary pence, or otherwise under circumstances in which it would not be received; see *Richardson v. Saunders*, decided by five judges, June, 1881, 50 L. J. M. C. 137; 7 Q. B. D. 388.

Guardians may give relief to a parent to enable him to pay the ordinary school-fee at the school which he may select for his child (39 & 40 Vict. c. 79, sec. 40).

Previously to August, 1880, every school board might, at their discretion, make bye-laws, requiring parents to send all children between five and thirteen to school, and regulating the hours of attendance, &c.; such bye-laws to be sanctioned by the Privy Council, and to be enforced by penalties not exceeding 5s. In a school district not within the jurisdiction of a school board, the 'school attendance committee' might make similar laws, save that in the case of a district comprising a parish they could not do so except at parish instance.

By the 43-4 Vict. c. 23, sec. 2, the making of these bye-

laws is rendered *compulsory* in all cases ; and (sec. 4) every person taking into employment a child of the age of ten and under thirteen, resident in a school district, before such child has reached the standard fixed by a bye-law of that district for the total or partial exemption of children of the like age, is to be deemed to have acted in contravention of the Act of 1876 (see page 166), and is punishable accordingly. And proceedings may be taken for punishing the contravention of a bye-law as such, notwithstanding that such contravention constitutes 'habitual neglect' within the meaning of sec. 11 (see same page).

Education of Children employed in Factories.—Under the 41 Vict. c. 16 (see FACTORY ACT), the parent of every child so engaged is bound to cause it to attend some efficient elementary school as follows, viz. :—

If employed in a morning or afternoon 'set'—at least once on each week day :

If employed on the 'alternate day' system—twice on the week day preceding each day of employment—Penalty 20s. 'for each offence' (secs. 23, 84).

'A child who has not attended school for all the attendances required by this section shall not be employed in the following week until he has attended school for the deficient number of attendances' (sec. 23).

Every occupier of a Factory or Workshop must weekly obtain from the school teacher a certificate of each child's attendance ; in default of which the employment of such child is to be deemed employment contrary to the Act (sec. 24) :—Penalty £3 (sec. 83).

Every such occupier is bound, upon the application of the authority of a recognised school, to pay a weekly sum not exceeding 3d., or one-twelfth of the child's wages, towards the expense of its schooling. Such sum may be deducted from the wages of the child (sec. 25).

When a child, aged thirteen, has obtained a certificate of having reached a fixed standard of education, or of having

completed a certain amount of school attendance, such child is to be deemed a 'young person' for the purposes of the Act (sec. 26):

ELECTION, PARLIAMENTARY. The following Act, which is of interest not only to the Justice but to everyone possessing a vote, can only be touched upon briefly.

Corrupt and Illegal Practices Prevention Act, 1883 (46-7 Vict. c. 51). The expression 'corrupt practices' (sec. 3) comprises treating, undue influence, bribery, and personation, as respectively defined. The last named, *i.e.*, the applying for a ballot paper in the name of some other person, &c., is felony, punishable, upon conviction on indictment, with two years hard labour. The others are indictable misdemeanours, punishable with one year, or a fine of not over £200. 'Illegal practices,' *e.g.*, payment or receipt of money on account of conveyance of voters to or from the poll; or payment to, or receipt of payment by, any elector for the use of any premises for the exhibition of an electioneering placard, are punishable upon summary conviction by a fine not exceeding £100. In the case either of 'corrupt' or 'illegal' practices, the offender is further disqualified from the exercise of the franchise for at least five years.

Licensed premises, under the Intoxicating Liquor Acts, or on which any such liquor is sold to members of a club, &c., or on which refreshment of any kind is ordinarily sold and consumed, may not be used as a committee room for election purposes; and any person hiring, or knowingly letting them, for such use, is liable to a fine not exceeding £100.

Primâ facie, a person charged as above is dealt with by an 'Election Court' (sec. 43); but provision is made under certain circumstances for sending him before a court of summary jurisdiction. In these cases the Election Court, if they consider it in the interests of justice so to do, may cause him

to be brought before Justices at petty sessions, who, if the case be indictable, will commit or bail him to take his trial, or if the matter be summarily punishable will deal with it accordingly.

EMBEZZLEMENT (a). 'Whosoever *being a clerk or servant*, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security which shall be delivered to, or received, or taken into possession by him for, or in the name of, or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same,' &c. (24-5 Vict. c. 96, sec. 68). Triable at sessions; either where the offender received the money, or where he ought to have accounted for it. Bail 'discretionary.' [Pen. S. 5-14 y.; or impr. 2 y. with whipping, if a male under 16.]

The popular notion of embezzlement extends to quiet speculation of every description, as distinguished from bold and bare-faced robbery. Most people, for example, in ordinary conversation, would say (had they reason to do so) that their coachman had embezzled the corn, or their butler the wine, in neither of which cases would there, strictly speaking, be any embezzlement at all.

In order to constitute the genuine offence, the accused must in the first place have committed the act during his engagement as clerk or servant to an employer, although the property embezzled need not have been received by him in the discharge of his ordinary duties as such. In the next place, the property must have been received *from some third person*, upon account of his master, and intercepted before it

(a) This curious word seems to have come into the world without any assignable parentage. Its original meaning would appear to have been to 'squander or waste.' Mat. Prior, the poet, in his will left £1,000 to his executor, Adrian Drift, hoping that he would not 'embezzle or decrease the same.'

actually came into his possession. A clerk or servant who steals or makes away with property which he finds on the premises, or which his master himself has entrusted to his keeping, is guilty of larceny—not embezzlement.

A fraudulent intention, moreover, is of the essence of the offence, and must be distinctly proved. In some cases the necessary inference is easy enough; as if, after giving a clerk a £5 note to hand to his employer, I discover that he has cashed and spent it. But it is often otherwise, as where the charge of embezzlement arises out of an alleged non-accounting for monies received from time to time in the ordinary routine of business. Here the deficit may possibly have been the result of accident, carelessness, or indifferent book-keeping, and therefore, in order to establish a criminal charge, as distinguished from a mere civil liability to account and cash up, we must satisfy ourselves that there was some intention to do wrong. We are not likely to do any injustice to the accused in this respect, if we find unmistakeable false entries in his books—or if he has denied the receipt of money which it can be shown was actually paid, or if he disappeared by an early train when he found his delinquency was being talked about.

Evidence must be given, in a case of this kind, that the accused received some specific sum or sums, on behalf of his employer, and converted the whole or some portion to his own use. Any number of distinct acts of embezzlement, not exceeding three, committed within the space of six months, may be charged in one indictment. Where, however, a prisoner is charged with embezzling a gross sum, as in the case of a person bound to render a weekly account, it may be shown in evidence that any number of smaller sums have been embezzled, making up the amount alleged. *R. v. Balls*, 24 L. T. 760. In any case, evidence of any number of acts of embezzlement may be given in proof of a felonious intent.

It seems that a charge of embezzlement cannot be sustained if the accused, in rendering his accounts, admits the appro-

priation, and alleges a right, no matter how unsubstantial such allegation may appear, to withhold and retain the money or property in respect of which the charge is made; *R. v. Norman*, 1 C. & M. 501.

It is to be observed that whilst, in order to constitute the offence of larceny, it is necessary that the *animus furandi* should have existed at the moment when the property was taken, in embezzlement, which is a crime arising out of confidential relationship and a criminal breach of trust, the dishonest intent need by no means have accompanied the first receipt of the property embezzled. It may have arisen at any time during which the latter happened to be under the control of the guilty person.

It is not always clear whether a person is really a 'clerk or servant,' or an 'agent,' in which latter case he would not be within the Act. We can only direct attention to this important distinction. See *R. v. Walker*, 27 L. J. 207; and AGENTS.

Upon the trial of any person indicted for embezzlement, if it be found that he took the property in such manner as to amount in law to larceny, he may be convicted and punished for the latter offence, and *vice versa* (sec. 72).

Summary Jurisdiction.—As regards the summary jurisdiction of Justices in Embezzlement, see page 39 (5).

Embezzlement by Co-partners.—See LARCENY, offence 36.

Falsification of Accounts.—Any officer, clerk, or servant, or person employed as such, who shall wilfully, and with intent to defraud, alter, mutilate, or falsify any book, paper, or account belonging to his employer, or who shall wilfully and with intent to defraud, make any false entry therein, or omit or alter any material particular from or in such book, &c., is guilty of a misdemeanour (38-9 Vict. c. 24). [Pen. S. 5-7 y. or impr. 2 y.].

EMPLOYERS AND WORKMEN ACT, 1875. The object of the 38-9 Vict. c. 90, was to cast upon Justices in

petty sessions the duty of affording a convenient and effective court of arbitration in the case of disputes between employers and workpeople of a particular class. It was all very well to send the British workman before the best possible summary tribunal: otherwise, no Justice felt any particular anxiety to usurp the functions of a County-court judge. The Act does not apply to ordinary domestic servants, (see *MASTER AND SERVANT*), nor to 'menials' in the proper sense of the word; *i.e.*, not, as Blackstone suggests, persons employed *intra moenia*, but those who form part of the household establishment or *ménage* of their master. Perhaps any servant in respect of whom a tax is payable would fall within the term, although the test would of course not be applicable *vice versd.* Gardeners, grooms, and huntsmen, have been judicially held to be menials. With this exception, the Act applies to, and includes any labourer, servant in husbandry, journeyman, handicraftsman, or other person, *infant or of age*, engaged in manual labour, who has entered into any contract, express or implied, oral or in writing, being a contract of service, or a contract personally to execute any work or labour (sec. 10); see *Grainger v. Aynesley*, Nov. 22, 1880, 6 C. P. D. 182. Merchant seamen and apprentices to the sea-service were expressly excluded, but are brought within the Act by 43-4 Vict. c. 16, sec. 11.

The word 'dispute' must be understood as meaning some controversy or matter of complaint—the summary jurisdiction not existing merely *by consent* of the parties, *Clemson v. Hubbard*, 40 J. P. 725. Any such dispute between employer and a person employed as above, in relation to such employment, may be heard and determined by two Justices in petty sessions—provided that such court shall not,

- (1) exercise jurisdiction where the claim exceeds £10;
- (2) order payment exceeding £10 exclusive of costs; or
- (3) require security to an amount over £10.

Subject to this proviso, the court may,

- (1) order payment of wages, damages, &c.;

- (2) adjust and set-off all claims and counter-claims arising out of the service contract;
- (3) rescind any contract, upon just terms; and
- (4) accept security from the defendant for performance of his contract, instead of awarding damages.

No such proceedings are to be deemed of a criminal nature. No warrant is to issue. The plaintiff must annex particulars of his claim to the summons; and the defendant, if he intend to rely on a counter-claim, must give previous notice thereof. Any payment may be ordered to be made by instalments. Payment may be enforced by distress, after previous service of order. No order of commitment, which must be under and according to the Debtors Act, 1869, sec. 5, (see page 45), can be made until after a judgment-summons (*i.e.*, a summons to appear for examination upon oath) has been served upon the party in default (Rules, 29 Aug., 1877). No appeal. See APPRENTICES.

EVIDENCE. A man may as well mount the box without reins, as the bench without some notion of 'Evidence.' The Justice in the latter predicament is liable to be perpetually repressed by his clerk in a particularly vexatious manner. Many other matters he may treat, from a sublime and superior point of view, as mere incidents of detail, respecting which he serenely desires to be informed. But Evidence disdains to be thus dallied with. Her influence pervades and regulates the whole course of every judicial inquiry. The subject is a far wider one than the uninitiated carelessly suppose. We can but offer some scattered hints upon points of daily occurrence, with a glimpse of the surrounding land.

It may be observed at the outset that, in summary proceedings, Justices themselves fulfil the office of a jury elsewhere; and that the degree of credit to be attached to any evidence, whatever may be its nature, is entirely for their consideration.

Presumption of innocence.—In criminal cases, when this evidence, whether direct or circumstantial, fails to produce in their minds a degree of conviction equivalent to moral certainty, the accused, in familiar phrase, is entitled to the benefit of the doubt. This expression, although commonly employed by lawyers, is obviously inexact. It might be correct enough if there were no presumption in the case, or if the presumption were against the prisoner. But the law presumes him guiltless until the contrary be proved. And, so far from having to beg or accept the benefit of a doubt, he stands upon a pedestal which can only be overthrown by an amount of proof which excludes, according to our judgment, the possibility of his innocence. A presumption which could be upset upon the mere *preponderance* of evidence would scarcely be worth talking about. We give him the benefit of our *failure*—just as Napoleon did to Wellington at Waterloo.

In civil cases, we need scarcely observe that no presumption exists. The plaintiff and the defendant meet upon level ground. The plaintiff, it is true, is bound to set the scales in motion; but the decision must be according to the ultimate rest of the balance, as determined by the weight of evidence thrown in upon either side.

Circumstantial evidence, the supposed uncertainties of which have furnished so many sensational chapters to the novelist, affords in many cases the most conclusive testimony which one could possibly desire. We act upon it, as Voltaire reminds us, in most of the daily concerns of life. *Presque toute la vie humaine roule sur des probabilités.* But, in criminal cases, we are bound to feel assured that the conclusion at which we arrive is distinctly pointed to by all the circumstances of the case, and that it is consistent with no other reasonable and adequate hypothesis. We must be conscious of no lurking and unsatisfied doubt. By doubt is meant a genuine hesitation, either with regard to the value of particular evidence, or the conclusion which

ought to be drawn from it. We are all of us apt to be more or less demoralised by responsibility; and a nervous wavering in the individual judgment is often mistaken for a difficulty in the matter itself. It is true enough that the same chain of occurrences may occasionally produce a different effect upon different minds. One jury will convict where another would acquit. But that is not to the point. Each case must be determined by those to whom it is entrusted, and by their own interpretation of the evidence. And the conclusion, to their thinking, must be irresistible as against the prisoner, before it can be acted upon to his disadvantage. Absolute certainty is excluded by the conditions of the process.

Circumstantial evidence would of course be inferior in value to direct evidence if we could always assume the latter to be true, or had any available means of gauging its value. But it is often far more difficult to decide whether a witness is speaking truth, or to reconcile the positive and conflicting statements upon either side, when both parties were actually spectators of the same occurrence, than to draw a satisfactory conclusion from circumstances which we have good reason to believe really took place. See RAPE. .

The **Confession** of a prisoner is, no doubt, *primâ facie*, the best evidence against him. But, before it is accepted, the court should be satisfied that it was freely made. Suspected persons ought not to be convicted upon 'wild and whirling words,' uttered perhaps in the terror and bewilderment of a sudden accusation, and when eager to say anything which might appease the prosecutor and induce his forgiveness, rather than be dragged away to the lock-up. Hence it is a settled rule that a confession or statement made in consequence of any threat, promise, or inducement held out by an officer or person in authority, or by the person injured by the offence, or by any one who had at the time, either actually or presumably, power to forgive, must be held inadmissible; *R. v. Fennell*, C. C. R., May 21, 1881, 45

J. P. 666. Of course the circumstances under which a confession may be, or may be supposed to have been, thus elicited, will vary in a thousand ways ; and it is for the court to decide whether the prisoner, when he made the self-criminating statement, was really influenced by the position or language of the person addressed. Any confession, however, made to an officer, or person injured, without any such inducement as above supposed, is good evidence. And, if made to any indifferent person, it is immaterial whether it was or was not extracted by promises or pressure. Moreover, any fact discovered in consequence of a confession which must itself be disregarded, is not the less evidence by reason of the manner in which it was brought to light.

The following are among the leading rules applicable to evidence in general :

- (i) The matter in issue must be proved by the party who states the affirmative in substance.
- (ii) The evidence must correspond with the allegations, and be directed to the point at issue (See CHARACTER). It is sufficient if the substance of the case be proved.
- (iii) If a man by his own wrongful act withhold evidence, every presumption to his disadvantage will be adopted.
- (iv) The best evidence of which the nature of the case admits must be given. Secondary evidence is only admissible where the absence of primary evidence is satisfactorily explained. Circumstantial evidence, which is in its nature secondary, is therefore to be allowed only where direct evidence cannot be supplied.
- (v) One witness is sufficient, if he can prove the necessary facts. The uncorroborated evidence of an accomplice is, however, not to be relied upon.
- (vi) A witness must only state facts. His mere opinion is no evidence. This rule is subject, however, to the

exception which admits the opinion of scientific witnesses in certain cases.

- (vii) Hearsay evidence is inadmissible, and conversations which have taken place out of the hearing of the party to be affected cannot be given in evidence. This is an important rule, but need not be pushed, as it too frequently is, to the point of superstition and absurdity.

It is usual to produce in court the instrument alleged to have been employed in the commission of an offence, as well as anything of a portable description immediately connected with the charge, as the best evidence of their actual nature.

Witnesses in General.—Any person, of any age, whatever may have been his antecedents, and whatever his interest in the result, is competent to give evidence, if he seems to have sufficient discretion to understand the nature of an oath. Witnesses of various religious persuasions may be sworn, or make declaration, according to their several tenets. A Jew is sworn hatted over the Pentateuch; and nothing is required of a Quaker beyond his peculiar affirmation. By 24-5 Vict. c. 66, if any person be unwilling from alleged conscientious motives to be sworn, the court, ‘upon being satisfied of the sincerity of such objection,’ may receive his solemn declaration. And, under 32-3 Vict. c. 68, sec. 4, a similar declaration may be accepted from any person who objects to take an oath, or is objected to as a person upon whom no oath would be binding, if the court be satisfied that it would in fact have no binding effect upon his conscience. Any false statement wilfully made afterwards renders him liable to the pains of perjury.

Any witness who refuses to be sworn, or otherwise placed under an obligation to give evidence, or who subsequently refuses to answer questions properly put to him, without just excuse, may be committed by any Justice present to the House of Correction for seven days, unless he in the mean-

time consent to be examined and answer (11 & 12 Vict. c. 43, s. 7). As regards privileged communications, see SOLICITORS.

The policy of the law is that every witness in a court of justice should speak with absolute freedom and unreserve. Consequently, no witness is liable in damages for anything which he may answer or say in his capacity as such, even upon the score that the words complained about were prompted by sheer malice and bad faith; *Dawkins v. Rokeby*, L. R. 7 H. L. 775; *Seaman v. Netherclift*, 41 J. P. 389.

Dying declarations.—Any statement made by a dying person, touching the infliction of the injury of which he is dying, may be given in evidence at any subsequent trial or inquiry in relation to the cause of his death. But it must appear that he was not only aware of his danger, but without hope of recovery. Under such circumstances the law presumes that the moral inducement to speak the truth will be sufficiently powerful without the additional obligation of an oath. See also WITNESSES, page 459.

Examination of Witnesses.—Generally speaking, a witness upon his examination in chief, *i.e.*, by the party for whom he is called, must not be asked 'leading questions,' that is to say, questions couched in such form as to lead to and suggest the answer desired. On cross-examination by the opposite and presumably hostile side, this rule does not apply. A re-examination must be confined to questions tending to show the true bearing of facts elicited by cross-examination; and new facts, not tending to explain the witness' previous answers, are not to be introduced.

It is the daily practice to allow constables and others to refresh their memories from memoranda made at the time of the transaction in question, or soon afterwards. But it must be understood that they then speak from revived recollection, and not from the mere contents of the paper. The copy of an *affiche*, &c., or words printed up, may be read as secondary evidence, the original not being available; but a constable

who made a pencil transcript, which he afterwards recopied in ink, was not permitted to read the latter (see Rule iv).

A witness is not bound to answer any question, if the answer thereto would, in the opinion of the Judge, have a tendency to expose him to any *criminal* charge, or penalty, which the Judge regards as reasonably likely to be preferred or sued for; *Re Reynolds*, Ch. App. 51 L. J. N. S. 756; *Lamb v. Munster*, Q. B. 52 L. J. N. S. 46.

He may, however, with a view to impeach his credit, be asked in cross-examination whether he has been convicted of any particular crime, &c.

Any Justice, in special or petty sessions, in case it shall appear that any person has been guilty of perjury during the proceedings, may direct him to be prosecuted and commit him for trial. See PERJURY.

Criminal Proceedings.—Evidence of Parties—their Husbands and Wives.—As we have already pointed out (Prelim. Notes, Ch. VI.) the summary jurisdiction of Justices extends over two distinct classes of cases, the one in its nature of a criminal, the other of a civil character. The first includes all charges, not necessarily implying actions *mala in se*, upon which a man is liable to be convicted, and fined or imprisoned. In all proceedings of this kind, the prosecutor may appear as a witness; while the accused, as a general rule, is neither competent nor compellable to give evidence for or against himself. And no husband is competent or compellable to give evidence for or against his wife, or *vice versa*. The latter doctrine, however, is subject to a very wide apparent exception. Upon any Information laid by one man against another, the prosecution is supposed to be really undertaken on behalf of the Crown. In accordance with this theory, the party who sets the law in motion is a ‘nominal prosecutor,’ and no more. Consequently his wife’s evidence in the matter is, technically speaking, neither for nor against him personally. Thus if A. inform against B. for assault, Mrs. A. is a competent witness in support of

the charge; or she may be called by B. to support his version of the story. But Mrs. B. cannot give evidence either for or against her husband, and, consequently, may not speak at all.

There are some few statutory exceptions to the rule that a defendant cannot give evidence for himself, or call his wife in support of his case, which will be found noticed under the titles 'Adulteration of Food,' 'Contagious Diseases,' 'Drunkenness,' 'Intoxicating Liquor Laws,' 'Workmen,' &c. And a husband may give evidence against his wife, and a wife against her husband, not only in certain events provided for by the 'Married Women's Property Act, 1882'—see page 251—but upon any charge of unlawful personal violence inflicted in matrimonial war.

When two persons are charged jointly, neither of them (nor the wife of either) can give evidence either for or against the other; nor can any statement or confession of the one be received to the disadvantage of his companion. But if the case be dismissed as against one, or if he plead guilty to the charge, he may be heard as a witness either way. When prisoners are tried separately, although for offences committed at the same time and place, they may be treated as independent parties, so far as their testimony is concerned.

Evidence of Police-constables.—The uncorroborated evidence of a police-constable ought to be received with a certain amount of caution. Giving the force credit, as a class, for the highest degree of integrity and goodwill, they are exposed to the greatest temptation to make the most of a case. A constable with a charge in hand must be a much better man than the rest of us if he would rather see his prisoner acquitted than not, even at the expense of a rebuff to himself. He is bound to make his story hold water, or to stultify himself for telling it at all. And who does not know how fatally easy a thing it is to tint facts, or to report the spoken words of a conversation in a sense in which they were never intended? One may bear false witness of the most danger-

ous description by simply modifying an accent. All this can be done, not only without tangible falsehood, or any violation of literal truth, but even unwittingly by a man who has only one reigning motive in his head. Again, when an officer has been foiled about a charge which he perhaps *knew* to be well founded, suppose against a publican for infringing the licencing law, what a temptation to put oneself in the right at last! Is the enemy to smile for ever in the complacency of an unrighteous triumph? And, when the chance comes, what wonder if it is not allowed to slide, when that can possibly be prevented. We must not forget, moreover, although it is an ungracious topic, that to back up the story of a brother-constable is a duty which, on the *do ut des* principle, let alone a natural *esprit de corps*, may sometimes be rather too religiously fulfilled. Finally, constables, from training and habit, usually deliver their evidence with a certain degree of assurance and *aplomb* which in itself invites confidence, and disarms the suspicion of exaggeration which is so often excited by the manner of an ordinary prosecutor. They are, in short, the professionals in the game, and play with corresponding advantage. Nothing above said need wound the susceptibilities of the most sensitive member of the force. We have talked about the ordinary conditions of human nature. We will admit, if he likes, that there are fewer black sheep in the police fold than in any other. Unfortunately, as every shepherd knows, there are black sheep everywhere. And when this bad animal—or rather our old friend the sheep-skin wolf—is detected in a position so fraught with danger to the community he must be dealt with as *caput lupinum*. ‘It is on the honest testimony given by the police,’ observed Mr. Justice Hawkins (Stafford Assizes, July 19, 1879), ‘that the lives and liberties of people often depend; and it is only by enforcing the severest sentences against those who, thus placed, betray their oaths, that the public themselves, and those whose lives and liberties are at stake, can enjoy the protection to which they are

entitled.' The prisoners, two constables, who had falsely charged a publican with having been drunk on his premises, were each sent for five years' penal servitude.

Civil Proceedings.—Evidence of Parties, &c.—In cases of Complaint, including proceedings in Bastardy, as distinguished from those commenced by Information, and where the plaintiff's object merely is to obtain an Order for the payment of money, or for the doing of some act which ought to be done, we are no longer fettered by the rules which affect criminal proceedings. Here the right and liability to give evidence extends to all parties—husbands and wives.

One point only arising out of the matrimonial relationship must be remembered, and should be jealously respected. Neither husband nor wife is compellable, under any circumstances, to disclose any communication made by either of them to the other during their marriage (16-7 Vict. c. 83, s. 3).

Documentary Evidence.—The party relying upon a written document must produce it at the hearing. If he be unable to do so, he is at liberty, upon accounting for its non-production to the satisfaction of the court (but not otherwise), to give secondary evidence of its contents, either by a copy or verbally.

If the document be in the hands of the other side, he should give them previous notice to produce it at the hearing, and in default may give secondary evidence of its contents. This warning is not essential when, from the nature of the case, the opposite side must be aware that they will be required to produce the writing; nor can they urge want of notice when they actually have it in court. Letters and writings generally cannot be received in evidence until their authenticity is proved by some one who can speak to the handwriting of the author.

As regards written documents which purport to contain the terms of any bargain or engagement, the general rule is, that extrinsic evidence is not admissible to contradict or vary

the terms thus embodied, although it may be resorted to *ad libitum* for the purpose of explaining what has been written.

See AGREEMENTS.

Perhaps the above may be sufficient for the ordinary exigencies of petty sessions. Indeed, beyond the first elementary propositions, nobody ever yet learnt 'evidence' out of a book. One must be familiar, to some extent, with its application in actual practice before setting too confident a value upon the result of the most diligent study.

EXCISE. Proceedings for penalties under the various statutes relating to the Excise were formerly attended by certain peculiarities, which no longer exist. Justices, as a rule, could not mitigate a prescribed penalty (as for keeping a dog, carrying a gun, or hawking hardware without licence) to less than one-fourth. Any further indulgence lay in the discretion of the Commissioners. Penalties were enforced by distress, and, in default, the offender might be committed until satisfaction made, or the Commissioners were pleased to order his release. Previously to the 40 Vict. c. 13, s. 5, Justices had no power to award costs. By the Summary Jurisdiction Act (sec. 53) the ordinary incidents of summary jurisdiction are made applicable to all summary proceedings under statutes relating to the Inland Revenue or the Customs. When the sum adjudged by conviction exceeds £50, the period of imprisonment on nonpayment, or in default of distress, may exceed three but must not exceed six months. All penalties go to Her Majesty, and are to be paid to the Commissioners or their officers. Appeal to Quarter Sessions lies against an *acquittal* as well as a conviction; 7 & 8 Geo. IV. c. 53, sec. 82.

EXPLOSIVES ACT, 1875. Considering the extent and importance of the interests involved, the 38 Vict. c. 17, was by no means conspicuous in its original dimensions. But it contained a vigorous element of after-growth in a provision

for the making of Orders, both by Her Majesty in Council and by the Secretary of State, which were thereafter to become engrafted upon its earlier form. There is no doubt but that it would have been a fatal mistake to expose the numerous minute details required in an enactment of this description to the frank handling of a committee of the whole House.

By sec. 69, the duty is imposed upon every Local Authority of carrying into effect, within their jurisdiction, the powers vested in them under the Act. These authorities are the Court of the Lord Mayor, &c., in the City—the Metropolitan Board of Works within its jurisdiction—the Council in every Borough not assessed to the County-rate—Harbour Authorities—and, elsewhere, Justices in petty sessions.

Under an Order in Council (5 Aug. 1875) all explosives are, for the purposes of the Act, divided into seven classes, viz. :—

1. Gunpowder, ordinarily so called.
2. Nitrate-mixture (including pyrolithe, &c.).
3. Nitro-compound (nitro-glycerine, dynamite, gun-cotton, &c.).
4. Chlorate-mixture (chiefly blasting powders).
5. Fulminates of various kinds.
6. Ammunition (in three divisions).
7. Firework composition and manufactured fireworks.

We will pass over the grander features of the Act, providing for the government of mills and magazines, in favour of matters which, if of less apparent importance, are at least more frequently heard of in petty sessions.

Gunpowder Stores (sec. 15).—These may be kept upon licence from the local authority, valid only for the person named, limiting the quantity of powder authorised to be kept, and renewable annually. Not more than two tons may be held in any such store. Rules are to be observed, including the providing of working clothes without pockets, &c., the breach of any of which may involve the forfeiture

of the entire stock of powder, in addition to a ten pound penalty.

Sale of Gunpowder and Fireworks by Retail Dealers.

—Any person desirous of carrying on the retail sale of gunpowder, or any other explosive, must register his name with the local authority. No licence is required, and the party need simply state whether he intends to keep gunpowder only or 'mixed explosives,' which (barring the fulminates) includes the whole series mentioned above. As regards this registration, which is renewable annually, the local authority have no discretion. The maximum amount of explosive allowed to be kept on such premises, if registered for gunpowder only, is 200 lb., and not more than 50 lb. if stored in a dwelling-house, unless under the protection of a fire-proof safe, in which case 100 lb. may be kept. On premises registered for 'mixed explosives' (Order in Council No. 7), if fireworks only be kept, 200 lb. weight are allowed. When other explosives are in question, the amount varies according to the nature of the place, as well as the quality of the explosive.

As regards the retail sale of gunpowder and fireworks, the following rules are laid down, and are in most places very vigorously enforced. Under sec. 32, all gunpowder over 1 lb. in weight, when publicly exposed for sale or sold, must be in a substantial bag or canister, made and closed so as to prevent escape, and marked with the word 'Gunpowder.' No loose powder, over 1 lb. in weight, may therefore be kept open for sale in any shop. By Order in Council, No. 9, all explosives of the firework class, exceeding 5 lb. in weight, must be stored in a 'receptacle' exclusively appropriated to that purpose. The situation of this receptacle is left to the proprietor, and it need not bear any mark or label so long as its contents are not exposed for public sale. But no fireworks over 5 lb. in weight must be so exposed or sold, unless securely packed, and labelled "Fireworks—Explosive." Not more than 5 lb. weight of loose fireworks must therefore ever be exhibited on the counter, &c.; and it follows

that the store receptacle, if allowed to stand in the shop, which should never be the case, must upon no account be opened there, in order to take out articles required by customers. In addition to these rules, every registered person is bound (sec. 23) to take every reasonable precaution for the prevention of accident by fire or explosion. He is bound also (sec. 69) to show, upon demand, to the officer of the Local Authority every place in which explosives in his possession are kept, and to allow him to take samples, &c.

Very extensive powers are given by the Act to Government Inspectors (sec. 55, &c.) who are bound to see that all regulations are effectually carried out. Provision is also made (sec. 73) for the search of any place where there is reason to believe that any offence has been or is being committed with respect to explosives.

Powder, &c., for Private Use.—The maximum quantity which may be kept for private use is 30 lb. of plain gunpowder, or 150 lb. made up in safety—*i.e.*, breech-loading—cartridges. In lieu or reduction of the above, certain other explosives may be substituted. No explosive, however, may be kept for private use which is not authorised to be manufactured, or imported for general sale; nor any article of the 5th class. But any quantity of fireworks is allowable if intended for use within fourteen days, and stored in a safe place, (see Order in Council, No. 12, April 20, 1883). And carriers and others may convey gunpowder, subject to the provisions of the Act with respect to such conveyance.

Legal Proceedings.—Every offence under this Act may be prosecuted either on indictment or before two Justices in petty sessions. The latter cannot impose a penalty exceeding £100 (exclusive of costs and forfeiture) or imprisonment for more than one month (sec. 91). And where a penalty beyond the above amount is in question the defendant may demand to be indicted (sec. 92). Where a court has power to forfeit any explosive, &c., it may, instead of ordering such forfeiture, impose an equivalent penalty (sec. 89).

Appeal to Quarter Sessions from any summary order or conviction by which the sum adjudged to be paid, including costs and forfeiture, exceeds £20 (see page 73).

Penalties (recoverable by distress), if upon prosecution of Government Inspector, to Exchequer; otherwise to county or borough fund.

The Act provides for the following, among other

OFFENCES.

[*See, if necessary, note on Summary Jurisdiction.*]

N.B.—(1) Any person guilty of any offence punishable by a fine, may be ordered to be imprisoned with hard labour, in lieu of pecuniary penalty, for not more than six months (*i.e.*, one, upon summary conviction, see above) if the offence was, in the opinion of the court, calculated to endanger, or cause serious injury to, any person, or to cause a dangerous accident, and was wilfully committed by the negligence or default of the accused (sec. 79).

(2) All the following offences, except 7, 9 and 10, involve, upon conviction, the forfeiture (discretionary except as to No. 1) of all explosives on the premises :—

1. (Sec. 4). Making gunpowder or other explosive at any unlicensed place [£100 per day].
2. (Sec. 5). Keeping explosives, except upon licensed or registered premises; or, for private use, in quantities limited as above [2s. per lb.].
3. (Sec. 17). Breaking general rules as to stores [£10].
4. (Sec. 22). Same offence as to registered premises [2s. per lb. in respect of which, or being on the premises in which the offence was committed].
5. (Sec. 32). Selling or exposing explosives for sale, otherwise than as required by this section, as above explained [40s.].
6. (Sec. 33). Breach of rules as to the packing of explosives for conveyance [£20].

7. (Sec. 69). Occupier of stores or registered premises failing to admit or obstructing officer of local authority [£20.]
8. (Sec. 73). Person failing to admit or obstructing officer authorised to search premises [£50].
9. (Secs. 30, 80). Hawking or exploding FIREWORKS in public thoroughfare, or selling to children, see page 199.
10. (Sec. 77). Trespassing upon factory or magazine, or land adjoining, in the same occupation [£5]; or stranger found committing any act tending to cause explosion or fire thereon [£50].

Explosives Act, 1883, Appendix XXI., page 473.

EXTRADITION OF CRIMINALS. Any Justice may, as we have seen (Prelim. Notes, p. 24), upon information that any person has committed an indictable offence within his jurisdiction, at once grant a warrant for his apprehension. But this warrant, of course, cannot *primâ facie* be executed upon foreign soil. Assuming, however, that the accused has escaped to a country with which we have a reciprocal treaty for the purpose, it should be forwarded, together with the depositions, to the Home Secretary, who is thereupon authorised to take steps which may result in the foreign authorities either executing the warrant themselves and delivering the offender to our officer, or giving the latter the opportunity of arresting his prisoner himself.

In the case of criminals escaping to England from any country with which reciprocal arrangements have been made, it is provided by 33-4 Vict. c. 52 (see also 36-7 Vict. c. 60), that no such person shall be surrendered if his offence be merely of a political character, and not upon the list of 'extradition crimes,' which include the graver varieties of violence, theft, and fraud. A requisition for the surrender of a foreign fugitive must be made by the diplomatic representative of his country to the Secretary of State, who thereupon may order a metropolitan police magistrate to issue his warrant for the

apprehension of the accused. Should the police magistrate be satisfied that the prisoner is charged with an 'extradition crime,' and that the evidence is such as would justify his committal for trial had the offence been committed in England, he will send him to prison to await the Secretary of State's warrant for his surrender. Should the prisoner dispute the magistrate's *jurisdiction*, he may apply within fifteen days for a writ of habeas corpus; *R. v. Maurer*, Ap. 1883, 52 L. J. M. C. 104.

Treaties of reciprocity exist between this country and Austria, Belgium, Brazil, Denmark, France, Germany, Hayti, Italy, the Netherlands, Spain, Sweden and Norway, Switzerland, and the United States.

It must not be concluded, however, that a person who escapes to Portugal or Russia, or any other non-reciprocating territory, is therefore absolutely safe. The police, all the world over, are understood to be upon friendly terms; and the production of a warrant in due form is frequently sufficient to induce them, as matter of professional courtesy, to get rid of an undesirable visitor, and escort the individual wanted on board a British vessel.

See also 'Fugitive Offenders Act, 1881,' 44-5 Vict. c. 69.

FACTORY ACT, 1878. Demolishing at one stroke all previously existing Factory and Workshop Acts, the 41 Vict. c. 16 took undisputed possession of the ground. The places of labour to which it relates are:—

I. **Textile Factories**, or premises upon which steam or other mechanical power is used in preparing or manufacturing cotton, silk, fibre, &c.

II. **Non-Textile Factories**, including—

(1) Print works, bleaching and dyeing works, earthenware, lucifer-match, percussion-cap, cartridge, paper-staining, and fustian-cutting works, blast furnaces, copper and iron mills, foundries, metal and indiarubber works, paper mills, glass works, tobacco factories, letter-press printing works book-binding works and flax mills.

(2) Hat-works, rope-works, bakehouses, lace warehouses, ship-yards, quarries, and 'pit banks,' where steam or other mechanical power is employed.

(3) Any premises upon which manual labour is exercised for gain, in making, ornamenting, or finishing for sale, any article, and upon which steam or other mechanical power is employed.

III. **Workshops**, including the works marked (2) above, where mechanical power is *not* employed, and also any premises, room, or place (not being a Factory), in which manual labour is exercised for gain, in making, ornamenting, or finishing for sale, any article, and to or in respect of which the employer of the persons working therein has the right of access or control.

Over all these industries, inspectors, appointed by the Secretary of State, are for the future placed in charge. They may enter and inspect by day any place which they believe to be a factory or workshop as above defined, and visit by day or night any such establishment when anybody is at work. It is necessary, however, to procure a Justices' warrant before entering any place which is actually used as a dwelling as well as a workshop. They may not only ascertain for themselves that every requirement of the Act is being complied with, and inspect and overhaul everything and everybody on the premises, but they enjoy the singular privilege of cross-questioning *any person* whom they may have reasonable cause to believe to be, or to have been within the preceding two months, employed in a factory or workshop, and of making him not only answer but sign a certificate that he has told the truth.

Elaborate provisions are made for securing, as far as possible, cleanliness and the main conditions of health, and for the adoption of all available precautions against accidents from machinery.

Jealous and stringent rules regulate the hours of employment, meal times, and holidays of young persons, women,

and children, while the instruction of the latter is provided for as already noticed under the head of EDUCATION. No child under 10 may be employed in any factory or workshop.

We will not follow the Act into its various details, many of which are necessarily of a special character. The pecuniary penalties attached to its violation will be found at sec. 81.

All offences may be prosecuted, and all fines recovered before a court of summary jurisdiction. Information within three months at latest (sec. 91). Fines to the Exchequer. Appeal to General or Quarter Sessions (page 73).

FALSE PRETENCES. 'Whosoever shall by any false pretence obtain from any person any chattel, money, or valuable security, with intent to defraud,' is guilty of the indictable misdemeanour bearing the above name, and liable to penal servitude for five years, or imprisonment for two (24-5 Vict. c. 96, s. 88). Triable at sessions. Bail 'discretionary.'

Any person *found committing* it may be immediately apprehended by any one, without warrant, and carried before a Justice (sec. 103).

The net would indeed be widely spread if the above clause were to be taken in its widest sense. The operation which is supposed to be known behind counters as 'shaving a lady,' can perhaps seldom be performed without pretences more or less unsubstantial as to texture, value, durability, and fashion, all intended to extract her money as rapidly and as plentifully as possible. So that it becomes important to discover exactly where the path parts, leading on the one hand to the House of Correction, on the other to a civil remedy, should any exist.

We may premise that the 'intent to defraud' need not be proved *aliunde*, if the court be satisfied from the general tenour of the case that the transaction was in itself a swindle.

It may be sufficient for the present to remark that no mere terms of commendation or the reverse, such as ordinarily pass between buyer and seller, fall within the meaning of the Act. There must be (i) an intentional and specific statement of some pretended *existing fact*, which the maker knows to be untrue; (ii) it must be material to the matter in hand; (iii) it must be made with intent to defraud; and (iv) the person to whom it is addressed must in point of fact believe it, and make over property upon the strength of it.

We will only cite one case in illustration, which is interesting as having divided the C. C. R. (*R. v. Bryan*, 26 L. J. M. C. 84). A man offered plated spoons in pledge, which he falsely pretended were 'of the best quality, having as much silver upon them as Elkington's A, with foundations of the best materials.' The pawnbroker swore that he advanced cash entirely upon the faith of this representation. The jury convicted the prisoner.

The majority of the court decided against the conviction, upon the ground that the spoons were of the same *species* as represented, although of inferior quality; in other words, that the prisoner had merely puffed his goods.

On the other hand, Willes, J., observed, 'It appears to me that the quantity of silver upon Elkington's "A" spoons must be taken to be a fixed quantity, and the best material for the foundation of such plated articles must have been a well-known article in the trade. It seems to me that, for all practical purposes, the prisoner's statement might be taken to be a representation as to a fact sufficiently coming within the region of assertion or calculation and not merely of opinion. Further, it is found that in this case the money was thereby obtained. If this were mere puffing of the article offered in pledge—if the prisoner had said no more than what one party dealing with another in the way of business might expect, the jury as men of common sense and knowledge of the world would have abstained from coming to the conclusion that the goods were obtained by a false

pretence. It must be a question in each case whether what is alleged to be a false pretence is or is not a misrepresentation of a specific fact, material and intended to defraud, and which did defraud ; or whether it is a mere puffing by which a person ought not to be taken in.'

Probably the reasoning and conclusion of the learned judge will be accepted by most readers.

We have instances of false pretences in the familiar 'begging-letter,' in the case of people who raise money by worthless cheques, or upon the notes of an extinct bank ; in that of a man who pretends to be a bachelor and induces a woman to advance money for their wedding ; and in that of Mr. Lawrence who obtained one shilling upon the pretence that he could evoke spirits who would ring bells and play upon the tambourine (*R. v. Lawrence*, Q. B., April 14, 1877 ; 41 J. P. 549).

The Act above cited extends to cases where the goods, &c., are procured to be delivered to a third party (sec. 89), as well as to those in which the execution of a security, &c., is obtained by fraud (sec. 90). As regards obtaining *credit* by false pretences, see page 95. Seduction under false pretences is a distinct offence ; see page 120 (5). The *attempt* to obtain property by false pretences is an indictable misdemeanour. Endeavouring to collect alms in this manner is summarily punishable : see VAGRANTS (14).

In conclusion, we will draw attention to the important distinction between false pretences and one particular phase of larceny (see p. 288). If I fraudulently induce a man to *lend* or entrust me with goods or money, and then make away with them, this is stealing, because the late proprietor never assented in his mind to my treating them as my own. But if I fraudulently induce him to part with his *ownership* of goods or money, which he thereupon assents to my carrying off and dealing with as my own, this is not stealing. I have obtained them not by theft but by false pretences.

Upon the trial of a person indicted for 'false pretences,'

he is not entitled to be acquitted merely because the Court may be of opinion that he ought properly to have been charged with 'larceny'; and in all cases of doubt, a prisoner should be committed for the former offence.

Why 'False pretences' should have been excluded from the First Schedule of the new Summary Jurisdiction Act is not very obvious. There seems no conceivable reason why a person charged with stealing or embezzling a sovereign should be eligible for summary justice, while (except in the case of a child under 12) the person who has simply obtained one by means of a quiet fib is obliged to go for trial. See Chapter VIII., p. 55.

FELONY. The term Felony, at Common Law, included every offence which occasioned a forfeiture of lands or goods. To this deprivation the punishment of death was, in the good old times, almost invariably superadded. 'It is a melancholy truth,' observed Blackstone, writing when George the Third was King, 'that among the variety of actions which men are daily liable to commit, no less than a hundred and sixty have been declared by Act of Parliament to be felonies without benefit of clergy; or, in other words, worthy of instant death.'

The crimes of murder, manslaughter, rape, &c., as well as that of larceny, *i.e.*, theft of personal property, however insignificant the value of the article stolen, have always been felonies at Common Law. Many offences have from time to time been added by statute to the list. The punishment of death, however, in its indiscriminate barbarity, has been abolished in all cases, except treason and murder. And the forfeiture incidental to a conviction for felony was renounced in 1870.

It is the duty of every person present when a felony is committed, or even attempted, to arrest the offender if he can; and the mere concealment of a felony which has come to one's knowledge, constitutes the indictable misdemeanour

technically known as a 'misprision.' See ARREST, COMPROMISE, COSTS, PRINCIPAL AND ACCESSORY, RESTITUTION, &c.

Every offence of lesser degree than felony is, properly speaking, a misdemeanour; a term which, however, is usually applied to those only which are of an indictable character. See MISDEMEANOUR.

Any person receiving property which he knows or is bound to know to have been the produce of a Felony, is himself guilty of felony, and liable to fourteen years' penal servitude. See RECEIVERS.

FINDING PROPERTY. An amusing essay might be written upon the innumerable ways and degrees in which property may be lost or mislaid, and the equally diversified number of cases in which it may be said to be 'found.' We will not anticipate the author. He will probably distinguish between finding a cigar-case in the pocket of a greatcoat lent by a friend, and finding a sovereign upon Salisbury plain. And his work will be very incomplete if it does not deal with such cases as a gold watch wrapped up in a kid glove, discovered in a hollow tree. Whether the casuist would take it or leave it, under the circumstances, we shall learn with some interest. For present purposes we will begin by imagining the simplest case, and stating as shortly as possible the legal aspect of the matter.

Suppose, then, that I pick up a ring in the road. Unless the owner has actually thrown it away, in which case it would belong to anybody who cared to take it, the ring remains as much his property as ever. And if, so soon as I have ascertained its nature, I pounce upon it as a prize, and resolve to appropriate it, in defiance or disregard of his rights, I am as much guilty of larceny as if I had stolen it from his dressing-table. In plain Latin, I have taken it *animo furandi*. No one, of course, can dive into my mind, and know for certain what my intentions at that critical moment actually were. But if satisfactory conclusions can be drawn from my

subsequent conduct, and I find myself in the House of Correction upon the result, it comes to much the same thing so far as I am concerned. If I walk straight to the pawnbroker's, for example; or if, in the case of a bank-note, I change it as soon as possible; or, in the case of a dog, send it off to a distant part of the country; or, in any case, conceal and deny all knowledge of my find, nobody will give me credit for one moment's honest intention in the matter.

But suppose that, after having picked up and examined the ring, I determine to carry it home, and if possible, restore it to the owner. In that case, even if I change my mind for the worse afterwards, and drop in at the pawnbroker's by the way, the original taking, not having been *animo furandi*, cannot subsequently become such. I did not steal the ring; and the owner, in whom the right to it still remains, can only proceed against me as civilly liable in the value. I cannot, in short, be prosecuted as a criminal. A mere movement of the mind, occurring perhaps, as Lord Campbell suggested, while the finder was in bed, cannot convert what was originally an honest taking, into a dishonest one, *R. v. Preston*, 21 L. J. M. C. 41; not even if such 'movement' took place after he had become aware of the true ownership, *R. v. Thurborn*, 18 L. J. M. C. 140.

Moreover, a man will not be held to have taken *animo furandi* in the first instance, if he then believed in good faith and upon reasonable grounds, that the owner could not be found without an amount of trouble or expense out of proportion to the value of the property, or that he had really abandoned all right to it. Neither would he perhaps be criminally liable, except indeed in the matter of a post letter, if he merely took it, and kept it in the expectation of getting a reward, *R. v. Gardner*, 32 L. J. M. C. 35. But whether a man who lays hold of lost property, knowing quite well who the owner is, or having the means of at once discovering the fact, and deliberately retains it for ransom, would be secure from conviction, is a question which it may be wiser to

discuss over one's books than make matter of personal experiment.

A railway servant who finds property left in a carriage, and appropriates it, is clearly guilty of larceny, since his immediate duty is to give the owner an opportunity of reclaiming it at the proper office. This excludes the supposition of an honest intent in the first instance. A hackney coachman is similarly responsible, and so probably would any *employé* be whose duty as to found property was distinctly defined.

The *bonâ fide* finder of lost property has a good title to it against all the world, except its rightful owner; even if it be found on another person's premises, *Bridges v. Hawkesworth*, 18 L. T. 154. And he is no more under an obligation to advertise it, or hang it in his window, than he is to throw it back into the street, *R. v. Dixon*, 25 L. J. M. C. 39. He has only to guard against the inference above referred to, viz., that when he first took possession of it, he resolved to appropriate it as his own, in defiance of the loser's rights. Against this he must be prepared to advance his conduct in the whole transaction, as weighed in the scales of common sense by a Justice or a jury.

Treasure Trove.—Concealing from the knowledge of Her Majesty the finding of any gold or silver coin, plate, or bullion, hidden in ancient times, is an indictable misdemeanour.

FIREWORKS. As to the manufacture, storage, and sale of these articles, see **EXPLOSIVES**. Under the Act of 1875 (38 Vict. c. 17) any person hawking or selling gunpowder or fireworks upon any highway, street, thoroughfare, or public place, is liable to a penalty not exceeding 40s., and forfeiture of the goods (sec. 30). Any person selling to a child apparently under 13 (sec. 31), or 'throwing, casting, or firing any fireworks in or upon any highway, street, thoroughfare, or public place' (sec. 80), may be fined £5. These penalties are recoverable by distress; but see 'N.B.' at page 189, in cases where

an accident might have been the probable result. Section 80 repeals by implication the clauses as to fireworks in the Towns' Police Act, and the Highway Act, 5 & 6 W. IV. c. 50. The latter (sec. 72), after dealing with the firework question, imposes a penalty of 40*s.* upon any person making any fire, or wantonly discharging any gun within 50 feet of the centre of any highway, to the injury of such highway, or the injury, interruption, or personal danger of any person travelling thereon. Within the Metropolitan Police District the same penalty awaits any person who 'in any thoroughfare or public place shall wantonly discharge any firearm to the damage or danger of any person, or make any bonfire,' 2 & 3 Vict. c. 47, sec. 54, sub-sec. 15.

FISHING. By the 24-5 Vict. c. 96 it is enacted that if any person be found fishing contrary to the provisions mentioned below, the owner of the ground, water, or fishery, his servant, or any person authorised by him, may begin by demanding from the offender all fishing-tackle of every description then in his possession; and in case they shall not immediately be delivered up, may seize them by force for his own use. But any person who is only guilty of *angling*, and whose offence is committed during the daytime (*i.e.*, between the beginning of the last hour before sunrise and the end of the last after sunset), upon being thus relieved of all reason for remaining by the water-side, is to be allowed to depart in peace (sec. 25). The well-known placidity of anglers, it will be observed, is recognised in this arrangement.

Any person who shall unlawfully and wilfully take or destroy any fish in any water which shall run through, or be in, any land adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, is guilty of an indictable misdemeanour, punishable by fine or imprisonment, and may be at once arrested without warrant and taken before any neighbouring

Justice to be dealt with according to law (secs. 24, 103). But this does not apply to persons *angling* during the daytime, whose offence, unless expiated as just mentioned, upon the spot, is specially provided for as follows :—

Any person who shall by angling during the daytime unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish *in any such water as above*, is liable to a penalty not exceeding £5 (sec. 24).

Any person who shall, except by angling during the day time, unlawfully, &c., any fish in any water *not being such as above mentioned*, but which shall be private property, or in which there shall be any private right of fishery, is liable to a penalty not exceeding £5, besides the value of the fish taken or destroyed (*ib.*).

Any person who, by angling in the daytime, shall commit the last offence, is liable to a penalty not exceeding £2 (*ib.*).

One Justice may convict in the above cases, but see SUMMARY JURISDICTION (4). Imprisonment with hard labour may be awarded in default of immediate payment. Period as per scale : see page 428.

As regards the defence founded upon a 'claim of right' to fish where found, see PRACTICE (13). 'Where a river is navigable and tidal, there the public may fish, unless some "several fishery," created before Magna Charta, can be established. But where the river is non-tidal, the public have no right, and can have no right, to fish'; *Pearce v. Scotcher*, Q. B. Mar. 1882, 46 J. P. 248.

Close Time for Freshwater Fish.—Freshwater fish are any fish living permanently or temporarily in fresh water, exclusive of salmon (Freshwater Fisheries Act, 1884, sec. 6).

The close season extends from the 15th of March to the 15th of June, both days inclusive; and if any person during this period (unless specially exempted under sub-sec. 3), 'catches or attempts to catch any freshwater fish in any river, lake, tributary stream, or other water connected or communicating with such river,' he is liable, upon summary

conviction before two Justices, to a penalty not exceeding 40s. (41-2 Vict. c. 39, sec. 11).

The same penalty awaits any person who during this period buys, sells, or exposes for sale any freshwater fish. All fish so caught, bought, sold, &c., are forfeited. A fine of £5 may be inflicted for a second offence. No person may buy, sell, or have in his possession for sale any trout or char between October 2 and Feb. 1 :—Penalty £1 per fish* and forfeiture (36-7 Vict. c. 71, sec. 20). Nor any salmon (unless cured, &c.), between September 3 and Feb. 1 :—Penalty £2 per fish, or part of a fish, and forfeiture.

Salmon Fisheries, &c.—It would be inconsistent with the line and limits of these notes to enter upon the wide and special subject of the Salmon Fishery Acts. The provisions of these, so far as they relate to the formation and maintenance of fishery districts, the appointment of conservators, &c., are extended by the 'Freshwater Fisheries Acts of 1878 and 1884' to all waters within its operation frequented by freshwater fish; and various enactments, previously applicable only to salmon, are extended to these fish.

As regards Sea Fisheries, see 31-2 Vict. c. 45.

Poisoning Fish, see page 345; see also DYNAMITE.

FORGERY is the form assumed by fraud when it displays itself in the making or tampering with a written instrument. It is forgery, of course, to write another man's name, or a name wholly fictitious, at the foot of a cheque (see *R. v. Martin*, C. C. R. Dec. 6, 1879, 5 Q. B. D. 34). It is forgery, also, fraudulently to fill up a blank cheque to which a signature has been already attached; or to fill it up with a sum exceeding that which it was known to be intended to carry. And it is forgery if a man, employed to prepare a will, insert legacies of his own invention. Further, it is forgery fraudulently to alter or obliterate words already written (*a*),

(*a*) It is forgery to alter the 'number' of a bank-note with fraudulent intent; and it may be worth noting that if, in the most unconscious

as, for example, the figures in an account or the crossing on a cheque; or by making a bill payable at three months appear payable at twelve.

Forgery was only counted a misdemeanour at Common Law, and is still indictable as such. But a long list of particular offences have been promoted to the rank of felony under the 'Forgery Act,' 24-5 Vict. c. 98. As regards the *locality* of the crime, it is provided, by sec. 41, that any offender may be dealt with, tried and punished, in any county or place in which he shall be apprehended, or be in custody, as if his offence had been actually committed there. And (sec. 44) that where it shall be necessary upon indictment to allege an intent to defraud, it shall be sufficient to allege such intent generally; and that, on the trial, it shall not be necessary to prove an intent to defraud any person in particular, but simply an intent to defraud.

A search-warrant may be granted by any Justice (see sec. 46) upon sworn information that any person is believed to have in his possession, without lawful excuse, any bank-note, or implement for making bank paper; or any paper, plate, tool, or material for producing forged impressions; or any forged instrument; or any mould, seal, die, matter or thing intended to be employed in forgery.

OFFENCES.

The following are among the more ordinary offences provided against by the above Act. They are all felonies, not triable at Sessions; and Bail in every case is 'discretionary.'

innocence, I happen to hold one which has been thus tampered with, no matter by whom, the Bank may (and probably will) refuse to cash it; *Suffell v. Bank of England*, Appeal, April, 1882; 51 L. J. (Q. B.) 401. Considering that the Bank received full value for the note when they issued it, whilst I paid full value for it when I received it—that I neither meddled with its figures myself, nor had any suspicion or reason to suspect that anybody else had done so—the hardship so far as I am concerned seems tolerably complete.

1. (Secs. 2, 3). Forging transfer of stock at Bank of England, or that of any company; or power of attorney relating thereto; or demanding to act under forged power; or personating owner of stock, and receiving or endeavouring to receive the dividend [Pen. S. 5 y.—Life; or impr. 2 y.].
2. (Sec. 12). Forging, altering, or putting off any Bank of England, or other bank-note, bank-bill, &c.; or having, without lawful excuse, any forged bank-note, &c., knowing the same to be forged [same].
3. (Sec. 13). Purchasing, or receiving, or having forged bank-notes in possession. As to 'possession,' see sec. 45. [Pen. S. 5—14 y.; or impr. 2 y.].
4. (Secs. 14—19). Engraving plates, or making paper, for the forgery of bills or notes, British or foreign. [Same. Pen. S. in certain cases, Life].
5. (Sec. 20). Forging or altering, or offering, knowing the same to be forged or altered, any deed or bond, or forging the name of any witness [Pen. S. 5 y.—Life; or impr. 2 y.].
6. (Sec. 21). Forging or altering any will, codicil, &c. [same].
7. (Sec. 22). Forging or altering, or offering or negotiating, knowing the same to be forged or altered, any bill of exchange, or promissory note [same].
8. (Sec. 23). Forging or altering, or offering, &c., 'any undertaking, warrant, order, authority, or request for the payment of money; or for the delivery or transfer of any goods or chattels, or of any note, bill, or other security for the payment of money; or for procuring or giving of credit . . . or any accountable receipt, acquittance, or receipt for money or goods, &c.' [same].
9. (Sec. 38). Fraudulently obtaining, or endeavouring to obtain, any property whatsoever under a forged or altered instrument [Pen. S. 5—14 y.; or impr. 2 y.].

10. (Sec. 25). Obliterating, &c., crossings on cheques. See 45-6 Vict. c. 61, s. 76, repealing the 'Crossed Cheques Act,' 1876, and extended by 46-7 Vict. c. 55, sec. 17 [Pen. S. 5 y.—Life ; or impr. 2 y.].
11. (Sec. 49). Accessories after the fact [Impr. 2 y.].

GAME. It is supposed by a good many people that the Game Laws are framed in the interest of a privileged class. Into that controversy we are not now going to enter. It is only fair to remember, however, that the wealthiest landowner in England may not carry a gun across his own stubbles, much less knock over one of his own birds, without a ticket of leave from the Excise first purchased and paid for. Even when the partridge lies dead at his feet, it is his own only in a qualified and incomplete sense. It is Game as much as ever. No charge of shot can drive *that* out of it or reduce it to the unsanctified level of duck or chicken. He may dine upon it, or give it away ; but he has no right to sell it—except indeed to a licenced dealer with an Excise board over his door. He can't even sell it to him, unless he hold a shooting certificate running over the entire year. We may warn the poacher out of our woods, but we certainly submit to restrictions which the poacher wouldn't if he stood in our shoes.

PROPERTY IN WILD ANIMALS.

Generally speaking, there are two parties to a quarrel. There are three in the matter of game. The landowner, the lawyer, and the poacher aforesaid are each entitled to their say. As the lawyer, however, very frequently gets the last word, we will begin with his view of the question.

Wild animals, while living, are not in strictness the personal property of any one. The owner of the soil has, no doubt, the exclusive right to kill and take them when found on his land ; and so soon as that is done—in other words,

so soon as they have been 'reduced into possession'—they become his own to all intents and purposes. But so long as they remain alive and free they are theoretically part and parcel of the land itself, and are no more 'chattels' in any proper sense of the word than are apples growing upon a tree (see page 289). And when articles of this description are severed from the soil or freehold, and carried away against the will of the owner, the offence at Common Law amounts merely to an invasion of his territorial rights, to be vindicated in a civil action. Whether the subject matter be game or growing fruit, a special enactment has been necessary to turn an act of mere trespass into a crime. Consequently we can only convict a poacher under the provisions of some particular statute, and have no pretext for denouncing him as a thief from the beginning. Even the gamekeeper who robs his master is not technically guilty either of larceny or embezzlement, unless the animals taken came either actually or constructively into the possession of their rightful owner, *R. v. Read*, Jan. 19, 1878, L. R. 3 Q. B. 131; *R. v. Petch*, June 29, 1878, 14 Cox C. C. 116.

It may naturally be asked—'But how about a hare shot dead in the middle of my field? Does not that hare *when dead* belong to me? and if the trespasser picks it up and carries it off, what is that but plain larceny?'

The answer to this question involves an important consideration, which is of perpetual occurrence in game cases. On the death, or 'severance,' of the hare, it no doubt became a chattel which you had the *right* to appropriate; but unless you exercised that right, and reduced the dead body into your possession, you are no more entitled to charge the trespasser with stealing it than you were before. Unless there were an interval between the act of shooting, and the act of carrying away, during which something took place amounting to a change of possession from the person who effected the severance to that of the soil-owner, the final act of appropriation does not amount to larceny. The whole

business is regarded as only one transaction, see *R. v. Townley*, L. R. C. C. R. 345; *R. v. Petch*, *supra*.

While, therefore, it is quite permissible to say in a Sunday school, that the person who snares a hare, or shoots a partridge on the sly, is just as wicked as the man who steals a chicken from under a coop, it is wrong to confound these acts upon occasions when exact language is expected. The offence of the latter has been branded as a larceny and a felony by the conscience of the realm, as embodied in its immemorial creed. The offence of the former is the breach of some special Act of Parliament, and unless it falls plainly within the four corners of that particular statute, it is, legally speaking, no offence at all.

Here, as in many other cases, we must be content to suggest rather than satisfy inquiry. We have only space before us for a short account of the leading statutory enactments which bear upon the main subject.

Enforcement of Penalties, &c.—It may be as well, with respect to the penalties indicated below, to direct the reader's attention to the paragraph headed 'Legal Proceedings' at page 214.

DEFINITION OF GAME—HARES.

Under the 1 & 2 Wm. IV. c. 32, Game is defined as consisting of 'hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards.' We shall use the word in the present Note with this meaning, and speak of the Act just cited as the 'Game Act.'

Under this Act, the tenant of land has the right of killing game on the property, unless this right be expressly reserved to the landlord. Where the landlord is thus entitled, to the exclusion of the occupier, the latter is liable to a special penalty for killing game or permitting others to do so (sec. 12).

The 'Hares' Act' (11-12 Vict. c. 29), after noticing the damage done by hares upon enclosed land, provides that the

occupier or owner of land, having the right of killing game thereupon, or any person authorised by him in writing, may kill the hares without a licence. And any person (sec. 4) is at liberty to kill hares by coursing or hunting, at his own pleasure.

GROUND GAME ACT, 1880.

Without interfering with arrangements under any lease or contract in force at the passing of the Act (September 7), it is declared (sec. 1) that 'every occupier of land shall have, as incident to and inseparable from his occupation of the land, the right to kill and take ground game [*i.e.*, hares and rabbits] thereon, concurrently with any other person who may be entitled to kill and take ground game on the same land,' and (sec. 3) every agreement or arrangement purporting, directly or indirectly, to divest the occupier of this right is declared void. Moreover (sec. 2), where an occupier is entitled *otherwise than by this Act* to the ground game, if he shall give to any other person a title to kill and take such game, he is nevertheless to 'retain and have, as incident to and inseparable from such occupation,' the same right to kill and take it himself as declared by section 1.

An occupier claiming to kill ground game under this Act, may kill only by himself or by persons authorised by him in writing. He and one other such person are alone entitled to employ firearms. He may authorise no person to kill save 'members of his household resident on the land, persons in his ordinary service on such land, and one other person *bonâ fide* employed by him for reward in the taking and destruction of ground game.' Neither he nor any person authorised as above need take out a game licence; and he may sell his ground game as if he held a licence to kill. Nothing in the Act is to interfere with the provisions of the 'Gun-licence Act, 1870.'

Sec. 6. 'No person having a right of killing ground game *under this Act or otherwise*, shall use any firearms for the

purpose of killing ground game between the expiration of the first hour after sunset and the commencement of the last hour before sunrise, and no such person shall for the purpose of killing ground game employ spring traps, except in rabbit holes, nor employ poison.' Penalty, on summary conviction, £2, recoverable by distress [43-4 Vict. c. 47].

LICENCE TO KILL GAME.

A licence for this purpose is required not only in the matter of Game proper, but also (subject to certain exceptions noticed below) for the pursuit of woodcock, snipe, quail, landrail, coney, or deer. The annual £3 licence expires July 31. Half-yearly licences at £2, covering periods between July 31 and Oct. 31, and Nov. 1 and July 31, are also issued, as well as £1 licences for any 14 continuous days, 46-7 Vict. c. 10, sec. 5.

Under the Game Act (sec. 23) any unlicensed person 'who shall kill or take any Game, or use any dog, gun, net or other engine or instrument for the purpose of searching for or killing or taking Game,' is liable to a penalty of £5 with costs. But he has the Excise to reckon with afterwards. For the above penalty is specially declared to be cumulative upon any other which may be attached to his offence. And, by the 23-4 Vict. c. 90, sec. 4, an *Excise* penalty of £20 is imposed upon every unlicensed person who shall take, kill, or pursue, &c., any of the animals in respect of which a licence is required. It is a case of Scylla and Charybdis, with the privilege of being swallowed by both.

Under the last Act (sec. 10), any person discovered by an officer of Inland Revenue, or by any person licensed to kill game, or by the owner or occupier of the land, doing any act whatever in respect of which a licence to kill game is required, is bound, upon the demand of such officer or person, to produce his licence, and permit the same to be read and copied, or to give his name and address, and the place at which he took out his licence, under a penalty of £20.

Among the 'exceptions' above referred to may be mentioned the killing rabbits by the owner of any warren, or enclosed land, or by any tenant of land, either by himself or by his permission; the hunting and killing hares and deer with hounds; and the assisting a licenced person to kill game, &c.; for none of which purposes is a licence required.

No Gun licence need be taken out by a person holding a licence to kill game. But upon Excise proceedings under sec. 4, *suprà*, if it appear that the Defendant used or carried a gun without a gun licence, the court, if constrained to acquit him of the principal charge, may then and there convict him under the Act of 1870, see page 222; 45-6 Vict. c. 72, sec. 6 (1882).

KILLING OUT OF SEASON, &c.

Any person taking or killing any

Partridge	between	1st February and 1st September,
Pheasant	„	1st February and 1st October,
Black Game	„	10th December and 20th August,
Grouse	„	10th December and 12th August,
Bustard	„	1st March and 1st September,

is liable to a penalty of £1 per head; and for killing or taking, or using any dog, gun, &c., for that purpose, on Sunday or Christmas Day, to a penalty not exceeding £5 (Game Act, sec. 3).

DESTROYING GAME, EGGS, &c.

Any person placing poison for the purpose of destroying Game:—Penalty £10 (Game Act, sec. 3).

Any person, not having the right to kill the game on the land, nor due permission, taking, or destroying in the nest, any game eggs, or eggs of any swan, wild-duck, teal, or widgeon, or knowingly having in his possession any eggs so taken:—Penalty 5s. per egg (*ib.*, sec. 24).

TRESPASS IN SEARCH OF GAME.

It is no trespass, within the Game Act, to follow in fresh pursuit, *i.e.*, from the find to the finish, a fox, hare, or deer, which has been started upon other land (sec. 35); but every man has a right to forbid a field of fox hunters from entering upon his property, and to prevent their intrusion if he can, *Paul v. Summerhayes*, Nov. 16, 1878; 4 Q. B. D. 9.

Trespass in the Day-time.—Any person trespassing upon any land in search of game, woodcock, snipe, quail, landrail or conies :—Penalty, recoverable before one Justice (but see SUMMARY JURISDICTION, 4), £2 (Game Act, sec. 30). The *purpose* must be beyond all reasonable doubt, or the accused is entitled to be discharged; see observations on ‘unlawful purpose,’ under TRESPASS. For definition of ‘Day-time,’ see page 200.

If five or more together :—Each person £5.

Any trespasser in search of game, refusing to tell to the owner, occupier, or gamekeeper, &c., his real name and address, or wilfully continuing on or returning to the land, when required to quit by the person having the right to the game, or by the occupier of the land, his gamekeeper, or servant, or other person authorised, may be apprehended by the party so requiring, or any person acting in his aid, and conveyed within 12 hours before a Justice. If not brought up within that time, he must be discharged, and proceeded against by summons or warrant. Penalty not exceeding £5 and costs (sec. 31). Moreover (sec. 36), when any person is found, by day or night, on any land in search or pursuit of game, with any game in his possession which appears to have been recently killed, the person having the right of killing the game, or occupier of the land, &c., may demand the same, and, if refused, seize and take it by force.

Five or more persons trespassing together in pursuit of game or woodcocks, &c., any of them carrying a gun, repel-

ling interference by menace :—Penalty £5 each, in addition to penalty under sec. 30 (sec. 32).

Any person taking or killing any hare or rabbit, in any warren or ground used for their breeding or keeping, whether enclosed or not, or setting or using any snare, &c.:—Penalty £5 (24-5 Vict. c. 96, sec. 17).

Trespass in the Night-time.—Any person unlawfully taking or killing any game or rabbits in any land, whether open or enclosed, or on any public road, &c., or unlawfully entering or being on such land with any gun, net, or other instrument, for the purpose of taking or destroying the game there:—Penalty for the first offence, hard labour for not exceeding 3 months, and at the expiration thereof to find sureties, &c. (9 Geo. IV. c. 69, sec. 1).

Any person found committing the last offence, and assaulting or offering violence to owner or occupier, or their servants, with gun, bludgeon, &c.:—Indictable misdemeanour. Pen. S. 5—7 y.; or hard labour 2 y. (*ib.*, sec. 2).

Three or more persons unlawfully entering or being on any land, open or enclosed, to take or destroy any game or rabbits, any of them being armed with gun, bludgeon, &c.:—Indictable misdemeanour. Not triable at sessions. Pen. S. 5—14 y.; or hard labour 3 y. (*ib.*, sec. 9).

Any person unlawfully taking any hare or rabbit in any warren or ground, open or enclosed, used for breeding or keeping the same :—Indictable misdemeanour. Fine or imprisonment (24-5 Vict. c. 96, s. 17).

POACHING PREVENTION ACT, 25-6 VICT. C. 114.

Whatever romance may attach to the life of a poacher, there is certainly none in his name. He is simply a 'poucher'; the individual who pockets or bags our game. A poached egg may boast of the like derivation. It is sent up in its natural *poche* or envelope, instead of *à la coque*.

Under the above Act, the word 'Game' includes hares,

pheasants, partridges, eggs of pheasants and partridges, wood-cocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game.

Any constable or peace-officer is authorised *in any highway, street, or public place* to search any person whom he may reasonably suspect of *coming from* any land where he shall have been unlawfully in search of game, or any person aiding or abetting such person, and 'having in his possession any game unlawfully obtained, or any gun, part of a gun, or nets or engines used for the killing or taking of game'; and also to stop and search any cart, or other conveyance, in which such officer may suspect that any such game, gun, &c., is being carried; and should any such game, gun, &c., be found, to seize and detain the same, and to summon the person before two Justices:—Penalty, upon conviction of having obtained the game by unlawfully going upon land, or of having unlawfully used the gun, &c., £5—game, gun, &c., to be forfeited, and sold or destroyed (sec. 2). Appeal to General or Quarter Sessions (see page 73).

LICENCES TO DEAL IN GAME.

These are granted annually under the Game Act, by Justices in special sessions in July (or at any other time, if they shall see fit, 2 & 3 Vict. c. 35, s. 4). Any householder, or shopkeeper, within their Division may be licenced, provided he be not an innkeeper or a beer-seller, nor the owner, driver, &c., of any public conveyance, carrier, or higgler. The licence empowers the holder to buy game from any person who may lawfully sell it (*i.e.*, holding a full annual licence to kill), and to dispose of it at any *one* house or shop, which must be furnished with a board inscribed with his name, and the words 'Licenced to deal in Game.'

A Justices' licence is not, however, in itself sufficient. An Inland Revenue licence must be obtained from the Excise, upon production of that granted by the Justices, and payment of a £2 duty (23-4 Vict. c. 90, ss. 14, 15). Excise penalty

for dealing without licence No. 2, £20 (24-5 Vict. c. 91, s. 17).

Offences by Licenced Dealers.—Buying any game from any person not authorised to sell ; or selling without a board displayed ; or elsewhere than at the one house or shop ; or affixing a board to more than one house, or when not authorised to do so, or buying, selling, or having in possession any bird of game more than ten days out of season :—Penalty (except as to last offence) not exceeding £10. Last offence, £1 per head of game bought, sold, or found. Licence forfeited upon conviction (Game Act, secs. 4, 28).

BUYING AND SELLING GAME.

Any person not licenced to kill game (except a licenced dealer), selling or offering to sell game to any one ; or, if entitled to sell game by virtue of a licence to kill, selling or offering it for sale to any one except a licenced dealer :—Penalty £2 per head (Game Act, sec. 25). Innkeepers selling game to their guests, for consumption on the premises, are specially protected (sec. 26). On the other hand, a person ‘not licenced to kill game’ may be proceeded against for the £20 Excise penalty mentioned under the last head.

Any person not licenced to deal in game, buying game from any one except a licenced dealer or a person at whose house, &c., a board is displayed as above :—Penalty £5 per head (*ib.*, sec. 27).

Any licenced dealer buying or selling, or having in his possession any bird of game more than ten days out of season ; or any other person buying or selling beyond the same period, or having in his possession any such bird (except in a mew or breeding-place) more than 40 days out of season :—Penalty £1 per head (*ib.*, sec. 4).

LEGAL PROCEEDINGS.

In all cases under the Game Act, the information must be upon oath, and laid within three months from the date of the

alleged offence. Any person may inform, irrespectively of his interest in the land or game ; and is entitled to one-half the penalty upon conviction, the residue going in aid of the county rate. As regards the defence founded upon a 'claim of right' to do the act complained of, see PRACTICE (13). The proceedings, before two Justices, unless otherwise mentioned, are under the Summary Jurisdiction Acts. Upon non-payment of an adjudged penalty, imprisonment with hard labour may be ordered in all cases under the Game and Poaching Prevention Acts. Period as per scale, page 428. Appeal to General or Quarter Sessions (see page 73).

GAMING. That deeply-rooted and mysterious instinct which teaches most men to gamble whenever they get the chance, presents no easy problem to the legislator. The way is full of stumbling-blocks and dark corners. You can't define 'gaming,' to begin with. If you could, your definition must include sixpenny points and a half-crown bet, and you would hardly write these down as *mala in se*, without regard to extenuating circumstances. You can't march police into clubs or private houses, even if you know for certain that the most ruinous and outrageous gambling is going on behind the shutters. You dare not stop the quotation of racing prices in every day's paper, printed as it is for the sole and naked purpose of enabling the betting-man to make his book. You dare not, because horse-racing is in hands far too strong to tolerate any such interference, and horse-racing without betting would be as impossible and ridiculous as a ball without the band. Your task is doubly difficult where repression is not supported by the full weight of public opinion, and where that opinion is notoriously wanting among those to whom the less privileged orders are supposed to look for example and legislation. In fact, from those serener circles, of whose doings the great middle class know nothing whatever, come echoes now and then which must at least arouse their curiosity. Rumours of

ruin or disaster affecting some well-known name—the dispersion of some historic heritage, wrecked upon the chance of horse or card, must make them wonder what their betters are about. If they begin to suspect that gambling is, after all, the fashionable vice of the day—that it is pursued with reckless audacity, and regarded with no condemnation worthy of the name, by those whose opinion would be any real check, we can scarcely be surprised at their conclusion.

Not that we don't enact laws, which affect both peer and peasant. We did so when we declared that no money won upon any wager should be recoverable in any court. We made that sacrifice to appearances. We requested Justice to close her ears, as to such matters, to all alike.

Justice is not such an innocent as she looks. She is reputed to 'wink' occasionally. She must have winked at that pious proclamation.

A few years ago a distinguished nobleman staked his fortune (and, as it turned out, his life) against the chance of a particular horse for the Derby. What was it made him pawn every acre he had in the world, to meet that terrible settling? Had Justice anything to say to it? Not she. There is a stronger law than any which Justice can enforce—a law which all the Parliaments in the world could never annul—a law which it never occurred to him to disobey.

Nobody need suppose that these reflections are made in any puritanical or subversive spirit. Some such, however, may occasionally occur to the Justice in the discharge of his duty. Hodge and his friend, for instance, turn in for a go at skittles after their day's work. No harm in that. Skittles is a lawful game. But, unluckily for their host, they are overheard by the constable outside to agree that the modest pint of beer which has been drawn for their refreshment shall be paid for by the loser. A summons for permitting gaming upon licenced premises is at once taken out, and the landlord stands before you liable to a fine of £10 and the indorsement of his licence. There seems a screw loose some-

where. Justices, however, must work the law as they find it, and what the law is we will now proceed to consider.

Gaming-houses.—The first modern onslaught upon organised and systematic gambling was by the ‘Games and Wagers Act,’ 8 & 9 Vict. c. 109, which enacts that any person keeping or having the care of a common gaming-house, and every banker, croupier, or other person *acting in conducting the business thereof* (*Jenks v. Turpin*, June, 1884, 53 L. J. M. C. 161) shall be liable upon conviction before two Justices to a penalty not exceeding £100, or, at discretion, to six months’ hard labour; and that it shall not be necessary to prove that any person was playing for any money or stakes (secs. 4, 5). A constable may enter any such house under special warrant, by force if necessary, and arrest all persons found therein (sec. 3). Appeal to General or Quarter Sessions (see page 73).

The term ‘common gaming-house’ includes (sec. 2) every room or place kept for the purpose of unlawful play, and where a bank is kept by one or more of the players exclusively of the others; or in which the chances of the game played are not favourable to banker and players alike.

Further legislation was soon found to be necessary. The 17 & 18 Vict. c. 38 in its preamble complains that keepers of gaming-houses contrived, by fortifying their doors, to keep out officers until all the *indicia* of gambling had been destroyed. It enacts, accordingly, that any person who shall obstruct a constable endeavouring to enter, or bolt or bar doors, shall be liable upon summary conviction to a fine of £100 with costs, *or* to six months’ hard labour. And further, that any such obstruction, or the discovery of any contrivances for concealing any implements of gambling, shall be evidence that the house is a common gaming-house.

Moreover (sec. 4), every person, being the owner, occupier, or manager of such a place, is liable to a penalty not exceeding £500, or to hard labour as per scale in default. And every person found therein, refusing his name, is liable

to a penalty of £50, with the alternative of one month. Any person so found may be compelled to give evidence touching the fact of unlawful gaming, but upon making full discovery, is exempt from penalty.

Betting-houses.—By the ‘Betting-house Act,’ 16 & 17 Vict. c. 119, it is enacted that ‘no house, office, room, or other place, shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof . . . betting with persons resorting thereto.’ Any such house, &c., is declared to be a common nuisance and a gaming-house, as above.

The words ‘other place’ apply to any fixed and ascertained spot used for the above purpose (see *Gallaway v. Maries*, Nov. 30, 1881, 8 Q. B. D. 275). Thus they have been held to include the stool and umbrella of a betting-man upon a race-course, an enclosed cricket-ground, and a field fenced in for pigeon shooting, the two latter having knowingly been permitted to be used for public betting.

Penalty, on conviction before two Justices, for opening or using, or (being the owner or occupier) permitting the opening or using, or managing any house, &c., for the above purpose, not exceeding £100 and costs, or (in the first instance) six months’ hard labour. The Act (sec. 7) forbids further the advertisement, in any manner, of any such house, under a penalty of £30, or (in the first instance) two months as above. Appeal to General or Quarter Sessions (see page 73).

A deadlier blow at the advertising medium was in store; though it was not until twenty-one years afterwards that the ‘**Betting Act**’ of 1874 made its appearance. Among other good results of the 37 Vict. c. 15, was the discouragement of the professional Tipsters—those scandals of a section of the Press. The extravagant audacity of these rascals had become a real curse, since upon the faith of their precious information the precocious sportsmen of Cheapside too often laid out money which really belonged to their masters. It exhibited, at the same time, a phenomenon of human folly. Compared with the

disciple of a Racing Prophet, the victim of the confidence-trick was a model of caution and good sense. The Act provides that every person sending or publishing any letter or advertisement, whereby it is made to appear that any person will give information or advice for the purpose of any bet, wager, &c., *to be made in a betting house* (*Cox v. Andrews*, 53 L. J. M. C. 34), or inviting any such bet, &c., shall be subject to the penalties (page 218) provided by the Betting-house Act, sec. 7.

Cheating at play or in wagering upon the event of any game, sport, pastime or exercise is punishable as obtaining money under false pretences (8 & 9 Vict. c. 109, s. 17; and see *R. v. O'Connor*, C. C. R. Nov. 19, 1881; 46 J. P. 214).

Wagers.—By the 8 & 9 Vict. c. 109, s. 18, it is provided that ‘all contracts or agreements by way of gaming and wagering shall be null and void, and no suit shall be brought or maintained . . . for recovering any sum of money alleged to have been won upon any wager, or which shall have been deposited in the hands of any person to abide the event.’ The Act does not in terms refer to gambling on the Stock Exchange, but it is understood that bull and bear bargains are gaming and wagering transactions within its meaning. These, however, although they cannot be enforced in any court of justice, are no longer illegal, Sir John Barnard’s Act (7 Geo. II. c. 8) having been repealed by 23-4 Vict. c. 28; and a broker may recover from his client the usual commission in respect of dealings of this description; see *Thacker v. Hardy*, Q. B. Dec. 7, 1879, 49 L. J. 289. We will conclude with the story of a naked bet.

Two persons, A. and B., recently deposited £200 each in the hands of stakeholder C., to abide the result of a walking-match between them. A. won the race. B. thereupon wrote to C., *before he had paid over the stakes*, desiring him to return him his £200. To this cool request C. very naturally declined to listen, and paid the whole money to the winner, like an honest man. But the Court of Appeal

(reversing the decision below) held that he was wrong in so doing, inasmuch as the entire contract was void, and B., when he wrote his letter, was entitled to repudiate it, and to demand the return of his money upon that footing. In short, C. had to find the £200 which, according to this decision, he had improperly paid away. *Diggle v. Higgs*, Ho. Lords, June 26, 1877; 42 J. P. 245. See also the judgment of Hawkins, J. in *Read v. Anderson*, Q. B., Nov., 1882, 52 L. J. 214 (confirmed on appeal), and *Hampden v. Walsh*, 45 L. J. Q. B. 238; the well-known bet that the world was not round.

Gaming upon Licenced Premises, see page 270.

Gaming in Public, see VAGRANTS (17).

GAS. The 'Gas-works Clauses Act, 1847' (10 & 11 Vict. c. 15), was usually incorporated into the special Acts of ancient gas companies. More recently, the 'Gas-works Clauses Act, 1871' (34-5 Vict. c. 41), was passed, to be construed as one with the previous Act, and to apply to *all* subsequent undertakings of the kind.

Gas rents, including hire of meter, are recoverable as penalties, with costs, before two Justices, upon summons, as 'civil debts,' (see page 44). The meter is *prima facie* evidence of the quantity supplied. The costs may include those of cutting off the gas, &c. (34-5 Vict. c. 41, s. 40).

Fraudulent use of Gas.—Any person who shall lay a pipe to communicate with the undertakers' gas-pipe without their consent, or shall 'improperly use or burn such gas, or shall supply any other person with any part of the gas supplied to him,' is liable to a penalty of £5, and 40s. per day, recoverable by distress (10 & 11 Vict. c. 15, s. 18).

Meters.—The regulation, stamping, and inspection of meters is provided for by the 22-3 Vict. c. 66 and 23-4 Vict. c. 146. By the first of these Acts, every person using an unstamped meter is liable to a penalty of £5; the meter to be forfeited and destroyed. Any person injuring a gas

company's pipes, meters, &c., or altering the index of any meter, or preventing it from properly registering, is liable in a penalty not exceeding £5, payable to the undertakers, in addition to the damage done (34-5 Vict. c. 41, s. 38).

Gas-supply.—Undertakers neglecting or refusing to supply with gas any owner or occupier of premises entitled to the same, under such pressure as prescribed, may be fined 40*s.* per day (*ib.*, sec. 36).

Illuminating Power—Testing.—Two Justices, upon the application of not less than five consumers (where no gas-examiner is appointed by the local authority) may appoint a person to enter gas-works, and test the illuminating power and purity of the gas. Should the Justices (not being shareholders) be of opinion that on any day the gas supplied is under less pressure, or of less power or purity, than prescribed by this or the special Act, they may order the undertakers to forfeit to the local authority, or persons making application, a penalty not exceeding £20 (*ib.*, sec. 36).

GLEANNING. No person has any *right* to glean at Common Law, whether legally settled in the parish or not, *Steel v. Houghton*, 1 H. Bl. 51. In this case, Heath, J., observed: 'It is indeed agreeable to the law of a Christian country that the rich should provide for the poor; but the mode of provision must be of positive institution. We have established a nobler fund: we have pledged all the land in the kingdom for the maintenance of the poor.'

Gleaning without permission is plain larceny.

GUN LICENCE. The 33-4 Vict. c. 57 does not impose a tax upon guns. It is the rare instance of the abstraction and restitution in the form of a licence, of part of a man's personal freedom, irrespective of its public exercise. A licence to carry a gun, an umbrella, or a carpet-bag, along the high-road might possibly be exacted and defended upon reasonable grounds. To forbid a man to powder his own

hair in the solitude of his own dressing-room, without a permit in his pocket, had a redeeming touch of drollery about it. But to enact, at the present day, that a man strolling in his own grounds with his gun in his hand, is liable to be joined by a constable, who may stroll by his side till he either shows his licence or confesses his Christian and surname, and who, upon refusal, may take him by the elbow and march him out of his own gates, demanding any necessary assistance at the lodge, is to make a demand upon our obedience which we can only acknowledge with respectful surprise. The Act was no doubt passed for a desirable purpose, which it has apparently fulfilled to a considerable extent.

The word 'gun' (sec. 2) is defined as including 'a fire-arm of any description, and an air-gun, or any other kind of gun, from which any shot, bullet, or other missile, can be discharged.' It is obvious that many questions might be suggested under this very loose language, the word 'gun' having no etymology of its own. A small toy pistol has been held to be a fire-arm!

Licences (Excise :—duty 10s.) expire on each 31st of July. The penalty, recoverable before one Justice [see p. 428], upon 'every person who shall use or carry a gun otherwise than in a dwelling-house or the curtilage thereof' (*i.e.*, the garden or enclosure immediately surrounding the house), is £10, now mitigable to any extent, at the discretion of the court. The following are exempt from penalty: (1) Soldiers, volunteers, &c., on duty, &c. (2) Persons licenced to kill game. (3) or carrying gun for person holding gun or game licence. (4) Person scaring birds or killing vermin on land in his own occupation; or on land of another (holding gun or game licence) by his order. (5) Gunsmith. (6) Common carrier.

Penalty for refusing to give name (as in case suggested above) £10; and '*if not immediately paid, the Justice shall commit the offender to hard labour in the House of Correction for not exceeding one month, nor less than seven days, or*

until the penalty be sooner paid' [see, however, page 16]. An Inland Revenue officer, or any constable, may enter, and remain as long as necessary, upon any lands or premises (other than a dwelling-house or the curtilage) for the purpose of making the demand, and may arrest, upon refusal to declare name. A gun licence is forfeited upon conviction under the 'Game Act,' sec. 30. Page 211. No appeal.

HABEAS CORPUS. 'Magna Charta,' remarks Blackstone, 'only in general terms declares that no man shall be imprisoned contrary to law. The Habeas Corpus Act points him out effectual means as well to release himself as to punish all those who shall unconstitutionally misuse him.'

Of the writ of Habeas Corpus, the most celebrated in English law, there are various kinds, the most efficacious of which, says the same distinguished commentator, '*in all manner of illegal confinement*, is that of **habeas corpus ad subjiciendum**, directed to the person detaining another, and commanding him to produce the body of the latter, with the day and cause of his caption and detention, *ad faciendum, subjiciendum, et recipiendum*, to do, submit to, and receive whatsoever the judge or court awarding such writ shall order in that behalf. This is a high prerogative writ, running into all parts of the king's dominions; for the king is at all times entitled to have an account why the liberty of any of his subjects is restrained.'

A defendant may challenge in this manner the validity of his commitment, and may apply upon his own affidavit for a writ of habeas corpus which, upon probable ground shown that he is imprisoned without just cause, will be granted at once. The more modern and easier practice appears to be to move in the first instance for a rule to show cause why the writ should *not* issue. Upon this application, and without the necessity for bringing up the defendant in person, the whole question may be effectually discussed.

HABITUAL DRUNKARDS' ACT, 1879. This is a permissive and experimental measure, to continue in force for ten years only, the object being to enable the well-to-do or middle-class dipsomaniac to place himself under discipline for a definite period. So long as the public are not called upon to pay the cost, there is no reason why the experiment should not be tried, or why these unfortunate people should be grudged their 'private Bill.' The Act, however, does not touch the far more extensive and important question—What ought to be done with the habitual drunkard of our police courts, after a certain number of convictions? A woman went up from Brentford the other day for the *fiftieth* time. Except for these intervals of enforced sobriety, she would have killed herself with liquor long ago. She is probably invulnerable by this time, and may live to cost the county as much again. Nobody could cure her now; but there seems a retrospect of blind and blundering energy in those fifty convictions.

Under the 42-3 Vict. c. 19 any person is at liberty to establish, in the way of private enterprise, a Retreat for Habitual Drunkards, upon licence from the Local Authority, *i.e.*, the Justices of a County or Borough, in Quarter or Special Sessions respectively.

The Habitual Drunkard is defined to be 'a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or to herself or to others, or incapable of managing himself or herself and his or her affairs.'

Before admission can be obtained to one of these institutions, the applicant must prefer a request in writing, specifying the time during which he undertakes to remain secluded, and supporting it by a statutory declaration, signed by two persons, to the effect that he is *bonâ fide* an Habitual Drunkard. The applicant's signature to the above must be attested by two Justices, who have previously satisfied themselves that he

really deserves his character, and who have explained to him, *and made him understand*, the consequence of his prayer.

The applicant, when once admitted, will not be entitled to leave his Retreat until the expiration of the detention for which he has bargained, which is in no case to exceed twelve months.

The Act has hitherto proved almost a dead letter. There are at present (1884) only three licensed retreats in existence, and these upon the very smallest scale.

HACKNEY CARRIAGES. The following bears upon a point of constant occurrence. A job-master rented from a railway company an office and a slip of ground inside their station. On this piece of ground, which was, in point of fact, his own property, he kept unlicensed broughams, &c., standing ready horsed. The drivers, however, had orders not to accept, and did not accept, fares direct, but referred applicants to the office, where a contract was made out, by means of a ticket filled in with the hirer's name:—Held that the job-master and his driver were rightly convicted of *plying for hire*, within the Metropolitan Public Carriage Act (32-3 Vict. c. 115). If a driver be standing in a place, waiting for his vehicle to be hired, he is *plying for hire*. *Foinett v. Clark*, Exch., Feb. 6, 1877; 41 J. P. 359.

Under the Police of Towns' Act (*infra*, p. 349), provision is made for the licensing of hackney carriages. Should any person letting such carriage permit the same to ply for hire, without licence, within certain limits—or should any driver be found so *plying* without licence, or without his proper number properly displayed, the penalty is 40s. (sec. 45). It is scarcely worth while to enumerate offences which may be committed by cabmen or persons inside. The latter, however, may bear in mind that (sec. 66) the fare is no mere friendly matter of debt, but recoverable as a penalty. In other words, it is simply a criminal act not to settle it on the

spot. Moreover, in case of injury to oneself or one's port-manteau, it is clear that we must now look to the man on the box, and not to his master, for compensation—at least under the 'Hackney Carriage Act,' 6 & 7 Vict. c. 86. See *King v. Spurr*, Nov. 1881, 51 L. J. (Q. B.) 105.

HARD LABOUR is an aggravation of the simple sentence of imprisonment, and when authorised and intended to be inflicted must be specially mentioned in the sentence. We have seen (p. 16) that, notwithstanding any enactment to the contrary, Justices may adjudge imprisonment without hard labour, and (p. 22) that they can only impose it upon non-payment of a penalty, or in default of distress, where hard labour is authorised by the Act upon which the conviction is founded, and is in their opinion required to meet the justice of the case.

Where a person is *fined* under the Summary Jurisdiction Act, as the punishment for an indictable offence (see p. 40), there seems to be no power to inflict hard labour in default of distress. The Act gives power to impose it, if imperative imprisonment be awarded, but does not mention it as part of the alternative of non-payment. A similar consideration applies in the case of the Vagrant Act.

As regards the punishment itself, see PRISONS.

HAWKER. The word 'hawker,' which is said to have its origin in the German *hoch*, seems to have reference to the outrageous noise usually made by these persons in announcing their readiness to transact business. Pope speaks of a royal proclamation 'by herald hawkers,' obviously in the above sense.

The pedlar, as his name implies, travels on foot. He takes out his annual five-shilling police licence. The hawker takes out his more expensive certificate from the Excise, for the privilege of pursuing his travelling trade on horseback or

inside his caravan. But, in the first place, no such certificate, nor any equivalent, is required by the tinker, cooper, glazier, harness mender, &c., carrying proper appliances with him for these purposes either on horseback or in his cart (50 Geo. III. c. 41, s. 23). Any person, moreover, whether on foot or otherwise, may carry on a roving business, without licence, in the matter of victuals, a word which extends to everything that constitutes an ingredient in any food consumed by man. Printed papers 'licenced by authority' may also be freely sold. And commercial travellers, or other persons, selling or seeking orders for goods to or from dealers therein, and who buy to sell again, are free to pursue their calling without special authority. So are people who are themselves the makers of their goods or wares, or the servants of such makers; wholesale traders; and persons selling coals by retail. And anybody may sell any description of goods or merchandise in any public market or fair legally established. Otherwise, as a general rule, 'persons going from town to town, or to other men's houses, carrying to sell, or exposing to sale, any goods, wares, or merchandise, or carrying to sell or exposing samples or patterns of any goods, wares, or merchandise to be afterwards delivered, are to be deemed trading persons within the meaning of the Acts relating to hawkers.'

A hawker's licence (£4) is issued by the Inland Revenue, upon a certificate of the applicant's fitness, either from a Justice or superior officer of police. It is good for any part of Great Britain. Hawkers must place the words 'Licenced Hawker' upon every box, package, handbill, &c., under a penalty of £10 (50 Geo. III. c. 41, s. 14). They may not hawk gunpowder (see FIREWORKS), nor deal in spirits or other intoxicating drink, stamps, or tobacco, under considerable penalties. The hawker is liable to a fine of £10 for acting without a licence, or for refusing to produce it to any person upon demand. The latter may arrest him in default, and deliver him to a constable for conveyance before a Justice (29 & 30 Vict. c. 64, s. 11).

If thus *detained*, the Justice may adjudge the penalty and commit, with hard labour, as per scale (page 428) in default. Otherwise, upon proceedings by summons, the fine is recoverable by distress.

Proceedings in the above, being matters of Excise, no penalty, previously to the Summary Jurisdiction Act, 1879, could be mitigated to less than one-fourth of its prescribed amount. Neither did the scale provided by the Small Penalties Act apply in such cases. The rules referred to at page 16, apply now to hawkers as well as to other people. Costs may also be awarded, which was not formerly the case. One Justice may adjudicate, so far as his limited powers extend.

HIGH SEAS. Admiralty jurisdiction.—Beyond the line of low-water mark, as traced around the shores of these islands, lies the jurisdiction of the Admiralty and the realm of the High Seas. The open coast above this frontier, and below high water mark, is debateable ground. So much of it as for the time being is flooded by the tide forms part and parcel of the High Seas. So much as, for the time being, lies high and dry is part and parcel of the adjoining land. ‘So rigorous has been the line of demarcation, that, as regards the shore between high and low-water mark, the jurisdiction, in respect of offences, has been divided between the Admiralty and the common law according to the state of the tide. Such was the law in the time of Lord Coke, and such it is still.’ *Per* Cockburn, C.J., *R. v. Keyn* (Franconia Case), 2 Exch. D. 168.

The Admiralty jurisdiction does not, however, extend to any cinque-port, haven, or pier; or to any creek, river, or port, *within the body of a county*, that is to say, so far land-locked as that a man standing on either side can perceive what is doing on the other.

Offences committed at sea.—The Court of Admiralty in former days assumed the exclusive right of inquiring into

and punishing offences committed on board British vessels traversing their marine domain. This prerogative exists no longer. Crimes and offences committed at sea have gradually been withdrawn from their cognisance, and transferred to the ordinary jurisdiction of the courts ashore.

Under the 18 & 19 Vict. c. 91, any British subject charged with an offence committed on board a British ship on the high seas, or in any foreign port or harbour—or any person not a British subject charged with any offence on board a British ship on the high seas—and found within the jurisdiction of any Court of justice in Her Majesty's dominions, may be there tried; see *R. v. Carr*, Nov., 1882, 52 L. J. M. C. 12. And by the 30-1 Vict. c. 124, sect. 11, 'if any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any Court of justice in Her Majesty's dominions which would have had cognisance of such crime or offence if committed on board a British ship within the limits of the ordinary jurisdiction of such court, shall have jurisdiction to hear and determine the case, as if the said crime or offence had been committed as last aforesaid.'

See also 11 & 12 Vict. c. 42, sect. 2; and as to the costs of prosecution in these cases 45-6 Vict. c. 55, sec. 9.

Under the Judicature Act, 1873, all jurisdiction which at the commencement of the Act (1874) was vested in, or capable of being exercised by the Court of Admiralty, was transferred to and vested in the Probate, Divorce, and Admiralty Division of the High Court of Justice.

Merchant Shipping Act, 1854.—Under this immense code (17 & 18 Vict. c. 104, and certain amending Acts) are comprised almost every conceivable offence which can be committed in or in relation to the Merchant Service. Every such offence (sec. 518) if punishable by imprisonment for not over six months, or by a fine of not over £100, may be disposed of summarily by two Justices. Every offence (sec. 520) is to be deemed to have been committed either in the place

where it was actually committed or where the offender may be.

Among the offences of which masters of vessels may be guilty, we find—shipping seamen without agreement duly executed, (157)—neglecting to provide them with provisions and water of proper quality and in sufficient quantity, (221)—or with medicine, lime juice, &c., (224)—not allowing them to go ashore to complain to a Justice, consul, &c., (232)—endangering the safety of the ship by any act of misconduct, &c., (239)—making false entry in, or tampering with the log-book, (284), &c., &c.

In the matter of dangerous articles, (329), ‘No person shall be entitled to carry in any ship, or to require the master or owner of any ship to carry therein any aquafortis, oil of vitriol, gunpowder, or any other goods which, in the judgment of such master or owner are of a dangerous nature.’ Penalty for carrying or sending by any ship any such goods without distinctly marking them, or otherwise giving notice in writing, &c., £100, recoverable before two Justices. See also, as to specially dangerous explosives, 29 & 30 Vict. c. 69, sec. 3.

As regards seamen, the offence of desertion is punishable (243) by not over 12 weeks hard labour, with forfeiture of clothes and effects left on board, and all or any part of the wages then due.

Neglect or refusal to join ship or proceed to sea without reasonable cause is punishable with 10 weeks: wilful disobedience to any lawful command, with four. As to the excuse in cases of desertion, &c., that the ship is from unseaworthiness, improper loading, &c., unfit for the voyage, see 34-5 Vict. c. 110, sec. 7; 39 & 40 Vict. c. 80. The ‘stowaway’ who hides himself on board and goes to sea without leave is liable, under sec. 258, to a fine of £20 or four weeks hard labour.

A seaman may recover his wages (up to £50) in a summary manner before two Justices acting in or near the place of his

discharge, &c. ; and every order made by such Justices in the matter is final (187-8).

The impositions practised upon Jack ashore are unfortunately proverbial ; but under sections 235-8 Justices may punish those who tout for him before he leaves his ship, or who fleece him in the matter of board and lodging, or who make free with his kit or money.

Passengers drunk or disorderly, or otherwise misconducting themselves, on board passenger steamers are punishable under 25-6 Vict. c. 63, sec. 15.

The 'marine store dealer' proper, who buys and sells cables, sails, old junk, &c., or marine stores of any kind, is placed by section 480 under special obligations.

Finally every person wrongfully carrying away any part of any ship or boat stranded or in distress upon the sea shore or in tidal waters, or endeavouring in any way to impede salvage, is liable to a penalty of £50 (sec. 478) ; while to assault any magistrate, or other person lawfully authorised, while doing his duty in respect of a vessel in distress, or of ship or goods wrecked or stranded, is specially punishable under 24-5 Vict. c. 100, sec. 37, and constitutes an indictable misdemeanour for which seven years of penal servitude may be awarded.

HIGHWAYS. The Lords' Committee in their blue-book of September, 1881, report that there are upwards of thirty Highway Acts in existence, illustrated by 700 decided cases. They observe that a consolidation of this department of the law (which they recommend) can scarcely be other than an arduous task. It is little less than a presumptuous one to approach such a subject in a Note of ten pages.

Every parish is bound at Common Law, and irrespectively of any statutory obligation, to keep the highways running through it in repair. And, in order to secure the efficient performance of this duty, special officers called Surveyors of highways—*curatores viarum*—were, in the

reign of Philip and Mary, ordered to be chosen in every parish.

HIGHWAY PARISHES—HIGHWAY DISTRICTS.

The inhabitants of every highway-parish, or parish maintaining its own highways, are bound under the 'Highway Act' (5 & 6 Wm. IV. c. 50), sec. 6, at their first meeting in vestry for the nomination of Overseers of the Poor, to elect a Surveyor for the ensuing year. And such surveyor may be appointed whether or not the inhabitants are for the time being liable to maintain any highway, or to contribute to any highway rate (41-2 Vict. c. 77, s. 25). In the case of parishes with a population exceeding 5000, the inhabitants are at liberty to form a Highway-board, whose members are collectively to fulfil the office of surveyor, and carry into effect the provisions of the Highway Act. And all the powers which would otherwise have been vested in the vestry, or the parish surveyor, are to be exercised by these delegates, or any three of them, during their year of office (sec. 18).

It is the business of the parish surveyor, or of the board who undertake that office, to make and levy a rate for the purpose of carrying the above Act into execution. It is to be levied upon all property liable to be rated to the relief of the poor, and upon the basis of the Poor rate valuation lists; see 'Highway Rate Assessment and Expenditure Act, 1862'—45-6 Vict. c. 27. It must be allowed by two Justices, and is published and enforced in the same manner as the Poor rate (see page 350). Any person may appeal against his rating to the next General or Quarter Sessions (sec. 105).

We have hitherto spoken of a parish in its independent capacity, taking charge of its own particular roads. By the Highway Management Acts (25-6 Vict. c. 61, and 27-8 Vict. c. 101) power is given to the County Authority—i.e., the county Justices in Quarter Sessions—to associate the several parishes within their county into groups for this purpose, to be called 'Highway Districts.' The working

machinery is briefly as follows. So soon as these districts are created, a certain number of waywardens, not less than one for each parish, are appointed. These waywardens, together with the Justices residing within the district, constitute its Highway-board. As regards each constituent parish, they have all the powers, duties, and liabilities (except in the matter of highway rates) which previously fell to the lot of the parish surveyor, whose office is consequently abolished. The board, in fact, appoints its own district surveyor as its immediate agent in carrying out all the works and performing all the duties for which they are responsible.

One of these duties, it need scarcely be said, is to keep the highways of the district in repair, in the same manner as the surveyor of a parish is bound to do within his more limited province. And when complaint is made to any Justice that such highway is out of repair, two summonses are issued—one to the board, the other to the waywarden of the parish in which the fault is supposed to lie. And unless the board undertake the repair, or the waywarden repudiate the liability, the Justice, after certain preliminary steps, may appoint some person to execute the same at the expense of the former. If the liability to repair be disputed, the question is settled by indictment against the inhabitants of the parish. All sums required by the district board are obtained by precepts, stating the amount to be contributed by each constituent parish and addressed to its overseers, who are to levy the sums mentioned in the same way as rates for the relief of the poor. The expenses of keeping the highways of each separate parish in repair, and all other expenses payable by the board in relation to such parish, were formerly chargeable under its particular precept. But by the 41-2 Vict. c. 77, s. 7, all expenses incurred by any Highway-board after March, 1879, in maintaining the highways of each parish within their district are to be deemed to have been incurred for the common benefit of such several parishes, and (subject to an

approximate adjustment under exceptional circumstances) to be charged on the district fund.

As regards the power of Quarter Sessions to interfere upon complaint made to them 'that the Highway Authority of any Highway-area within their jurisdiction has made default in repairing all or any highways,' &c., reference must be made to the Act last cited, sec. 10.

Under the Public Health Act, 1875 (see page 387), every Urban Sanitary Authority is, within its district, exclusively to execute the office of Surveyor of Highways, and to exercise all powers which would otherwise have belonged to the vestry of any component parish. And every act required by any statute to be done by or to the surveyor of highways, may be done by or to their appointed surveyor.

As regards Rural Sanitary Authorities, the County Authority, in forming any highway district, is required by 41-2 Vict. c. 77, s. 3, to have regard to the boundaries of the rural sanitary districts in their county; and as far as possible to arrange the highway districts so that the two may be coincident in area.

Whenever a highway district, whether formed before or after the passing of the above Act, is or becomes thus coincident with a rural sanitary district, the Authority of the latter may apply to, and be permitted by, the County Authority to exercise the powers of a Highway-board within their district. The existing Highway-board (if any) will be at once broken up, and the waywardens will disappear from the scene. And all expenses incurred by the Rural Sanitary Authority in the performance of their new duties will be deemed general expenses of such Authority within the meaning of the Public Health Act. Power is given to the County Authority to compel the proper execution of the trust thus undertaken.

HIGHWAY SESSIONS.

Justices of the peace within their respective divisions are

required by the Highway Act (sec. 45) to hold from eight to twelve special sessions in every year for the purpose of carrying its provisions into execution. By 27-8 Vict. c. 101, s. 46, all these matters may be transacted equally at the usual petty sessions.

The surveyor of every parish (not highway district) within the division had formerly to verify his accounts and make a return as to the state of the roads, at a session held in March. These accounts are now audited by the district auditor (41-2 Vict. c. 77, s. 9), and this verification is consequently dispensed with; see 42-3 Vict. c. 39. If any vestry have neglected to appoint a surveyor or waywarden, as the case may be, the Justices may nominate one. They may also hear and determine informations against the surveyor for non-repair of a highway, and in the event of a conviction, besides inflicting a fine, may order the repair within a stated time, or the payment of a sum of money for that purpose in default (Highway Act, sec. 94) (a). The process in the case of a highway district has already been noticed. They may also, upon information that the funds of any turnpike trust are insufficient for the repair of roads within their division, order a certain portion of the highway rate to be paid as a contribution in aid (4 & 5 Vict. c. 59, s. 1). Disputes between parishes as to the extent of highway to be repaired by each may be adjusted; payment of rates may be excused upon the score of poverty, and a variety of other matters transacted which will be referred to as coming within such cognisance in the course of the next division of our subject.

HIGHWAY MATTERS IN GENERAL.

Proceedings before two Justices. All penalties recoverable by distress.

Surveyor's Liabilities.—A surveyor is liable under the

(a) Proceedings under this and the following section (95) are not affected by the provisions of the 41-2 Vict. c. 77, s. 10. See Letter of Local Government Board, 8th Sept., 1879; 43 J. P. 631.

Highway Act (sec. 56) to a fine of £5 for leaving heaps of stone, &c., on the road at night, without reasonable precautions against danger; see *Fearnley v. Ormsby*, C. P., Mar. 7, 1879; 43 J. P. 384. He is also, as we have seen, punishable, under sec. 94, for omitting necessary repairs. And, by sec. 20 (which does not apply to highway districts), a fine of £5 is to follow neglect of duty in anything required by the Act, for which no particular penalty is imposed. See *Robinson v. Stevenitt*, Q. B., June 1, 1878; 42 J. P. 614. The result is that the consequences of the non-performance of his statutory obligations having been thus defined, he is, so far, under no further personal liability, and in the event of any person receiving injury through his neglect such person cannot maintain an action against him. He must console himself by indicting the parish.

The liabilities of a surveyor are governed indeed by the broader principle that, being only the servant of those for whom he acts, if these latter, whether as regards matters of omission or commission, are not liable in an action for damages, he, as their agent, is equally exempt. This is the case where his employers are a non-corporate body, such as the inhabitants of a county or parish at large, who can only be reached by indictment. And when the duties and responsibilities of a surveyor are imposed upon a local authority the latter, in the capacity thus conferred, enjoy immunity from action to the same extent. All this is of course upon the supposition that the surveyor, or the board or body acting as such, have no original liability cast upon them by the statute under which they act.

Contracts by Surveyor.—It is the business of the surveyor, with the consent of the inhabitants in vestry, to contract for materials necessary for the repair of the highway. He must, however, hold no personal interest in any such contract, or in any work in connection therewith, without a licence from two Justices, under a penalty of £10 (sec. 46).

Width of Roads, &c.—He must make and maintain every

public carriage-way leading to any market town 20 feet wide at the least ; and every public horseway 8 feet at the least ; and every public footway, by the side of any carriage-way, 3 feet at the least, space permitting. But he need not form the latter unless at the desire of the vestry (sec. 80).

Materials for Road-repair.—Every surveyor may dig gravel, &c., for repairs, in any waste, common, or river within his parish (and, if necessary, within any other parish having more than sufficient for its own wants), and may gather stones for the same purpose upon any land within his parish, without payment, upon making satisfaction for damage done ; see *Alresford v. Scott*, May 30, 1881, 7 Q. B. D. 310 ; 45 J. P. 619. But no stones may be gathered without the owner's consent, except upon licence granted by two Justices in special sessions, after having heard the reasons for his refusal (sec. 51). The surveyor may also, by like licence, dig materials in enclosed lands (with certain exceptions) within the parish where they are wanted, and, under certain limitations elsewhere, upon making compensation for materials taken and damage done, to be ascertained by Justices in special sessions. The licence just referred to must, however, be preceded by a summons to show cause why it should not issue (sec. 53) ; and it should not authorise an indefinite amount of digging, but only so much as is justified by the extent of repair in contemplation when it is granted. *Earl Manvers v. Bartholomew*, Q. B., Nov. 12, 1878, 48 L. J. M. C. 3 ; 43 J. P. 54.

Ditches and Drains.—The surveyor may make and keep open all such ditches and drains as he may deem necessary through any lands adjoining any highway, upon paying for damage done, to be ascertained as above (sec. 67). And if the owner, or any other person, interfere with such ditches, he is liable to make good all expenses incurred in reinstating them, and to forfeit three times that amount in the way of penalty (sec. 68).

Trees and Hedges.—No tree may be planted in any

carriage-way or within 15 feet of the centre thereof (sec. 64). And if any such way be prejudiced by the shade of hedges or trees (except trees planted for ornament, or for shelter to any house, &c.) or if any obstruction be caused by any hedge or tree, the owner (*i.e.*, actual occupier, *Woodard v. Billericay H. Board*, Rolls, 1879; 43 J. P. 224) may be summoned to show cause at special sessions why such hedges and trees were not lopped, or why such obstruction should not be removed; and, in the event of his non-compliance with an order in that behalf, he is liable to a penalty of 40s., and the surveyor may lop or remove the same at the expense of the party in default, (secs. 65, 66).

Obstructions on Highways.—In the event of any obstruction to a highway from snow, or the falling-in of the sides, &c., it is the duty of the surveyor, from time to time and within twenty-four hours after notice from any Justice of the county, to clear the way (sec. 26). He may also, by order in writing from any Justice, bundle off and sell any timber, &c., left thereon, and not removed upon his own notice (sec. 73). As regards the offence of obstructing the highway in general, see 'Highway Offences,' below. The practice of placing 'trestles' upon newly-made roads was said by Crompton, J., to be well known and understood, and the court seem to have considered that there was nothing improper about it: *R. v. Justices of Surrey*, 24 J. P. 422.

Encroachments.—If any person shall encroach, by making any building, hedge, fence, or ditch, on any carriage-way within 15 feet of the centre, it is the surveyor's business to remove or fill up the same. The offender is liable at special sessions to pay all expenses, in addition to a fine of 40s. (sec. 69). As to Highway districts, see 27-8 Vict. c. 101, s. 51.

Steam-engines, Windmills, &c.—No person is at liberty to sink any pit, or erect any steam-engine within 25 yards, nor any windmill within 50 yards of the carriage-way, unless screened off so as not to frighten horses; nor to burn limestone or bricks within 15 yards, unless hidden in the same

way, under a daily penalty of £5 (sec. 70). A portable steam threshing-machine has been held within this clause. There is a similar provision as regards Turnpike roads in 27-8 Vict. c. 75.

Diverting, or Closing Road.—Whenever the inhabitants in vestry, or an Urban Sanitary Authority or Highway Board, deem it expedient that any existing highway should be stopped up or diverted, or when any private individual, with the approval of the vestry, &c., is desirous that this should be done, application must be made, through the surveyor, to two Justices to view the place. This view must be made by the Justices jointly, with the assistance of a properly-verified plan, and their certificate must be the result of their own personal inspection, and not founded upon information derived from other people (*R. v. Wallace*, Q. B. April 21, 1879, 43 J. P. 493). The point for them to decide, when the diversion of a highway is in question, is whether the proposed new road is nearer *or* more commodious to the public, see *R. v. Phillips*, L. R. 1 Q. B. 648. But it is not sufficient *merely* to find that it is 'nearer.' Should they find that it *is* nearer, they are to set forth by how much nearer, and should they consider it to be more commodious they are to state the reason why. If the old highway is to be abandoned in favour of the new road, there seems to be no occasion to give a reason for its being unnecessary. After these preliminaries, should the owner of the land through which, in the case of a diversion, the new highway is to pass, express his consent, certain proceedings are to be taken, terminating (should no appeal intervene, or should such appeal be dismissed) in an order at quarter sessions to stop up or divert such highway, and to purchase the land (if necessary) for the new route. The latter, when constructed, will continue for ever a public highway, and the parish or party liable to repair the old one will be answerable for the repair of the new, without reference to its parochial locality (secs. 84—93).

Discontinuance of Unnecessary Highways.—If any authority liable to keep any highway in repair be of opinion that so much of it as lies within any petty sessional division is unnecessary for public purposes, it may apply to the court of such division to view by two or more Justices, and should the court be of opinion that the application ought to be proceeded with, it may (after certain notices and inquiries provided by the Act) declare by its order that such highway is unnecessary for public use and ought not to be repaired at the public expense (41-2 Vict. c. 77, s. 24).

Widening Roads.—Two Justices, upon view, may order any highway, not sufficiently wide, to be widened up to 30 feet; the power to be exercised under certain restrictions. They have power to empanel a jury to assess damages. Provision is made as to minerals and timber under and growing upon the land taken, and for the raising funds (if necessary) for payment of compensation (Highway Act, secs. 82, 83, and see Public Health Act, 1875, sec. 154).

Temporary Road.—While an existing highway is being widened or repaired, the surveyor may make a temporary road through adjoining land (except in some particular instances), making such recompense to the owner as Justices in special sessions may think reasonable (sec. 25).

Bridges.—The maintenance of bridges stands upon a different footing from a similar obligation with respect to roads. The extent of public highway running through any given parish may be supposed to bear some rough proportion to its area, but the number and importance of its bridges is matter of accident. Consequently the care and cost of these is, generally speaking, a charge upon the county at large, and provided for at quarter sessions. By 41-2 Vict. c. 77, ss. 21, 22, any existing bridge may be declared by the County Authority to be one which the county is liable to maintain, and the same power may contribute half the cost of any bridge hereafter to be erected, after the same has been certified to be fit for its purpose, under 43 Geo. III. c. 59.

Main Roads.—Any road which ceased to be a turnpike road between Dec. 31, 1870, and the 16th of August, 1878, or which, being at the latter date a turnpike, may afterwards cease to be such, is to be deemed a main road, and one-half of the cost of repairs actually defrayed out of current rates after the 29th of September, 1878, by any highway authority acting within its area is to be repaid out of the county rate (41-2 Vict. c. 77, s. 13). And where it appears to any Highway Authority that any highway within their district ought to become a main road by reason of its running between great towns, or to a railway station, or otherwise, they may apply to the County Authority for an order declaring it a main road, and the latter may order accordingly (secs. 15—20). The 15th section does not in express terms pronounce that these main roads, when so declared by order shall be repairable at the expense of the county, but this is obviously implied.

Extraordinary Traffic.—Whenever upon any highway, whether a main road or otherwise, extraordinary repairs have become necessary by reason of excessive weight or extraordinary traffic, the Highway Authority 'may recover in a summary manner from any person by whose order such weight or traffic has been conducted,' the amount of the injury thereby done (sec. 23). The words 'excessive weight' and 'extraordinary traffic' appear to point to an exceptional use of the highway; see *Lord Aveland v. Lucas*, Nov. 14, 1879, 5 C. P. D. 351. When the carrying is part and parcel of the recognised industry of the place, and is conducted according to the regular course of such industry, the burden upon the road is not excessive or extraordinary within the meaning of this section; *Wallington v. Hookins*, Dec. 1, 1880, 6 Q. B. D. 206. And the mere fact that one person uses a highway more than his neighbours, is no ground for holding the user of such person extraordinary. See also *Pickering Highway Board v. Barry*, Dec. 1881, 51 L. J. M. C. 17.

90 **Bye-laws by County Authority.**—This Authority is

empowered to make bye-laws with respect to all main roads or other highways within any highway area in their county as to (1) width of wheels of carriages drawn by animal power; (2) nails or bars on the wheels of such carriages; (3) locking the wheels to the detriment of the road; (4) gates on highways; (5) regulating the use of bicycles (sec. 26). These bye-laws when made must be confirmed by the Local Government Board (sec. 35).

LOCOMOTIVES ON TURNPIKE ROADS AND HIGHWAYS.

The use of these machines is regulated by the 24-5 Vict. c. 70, amended by the 28-9 Vict. c. 83, and by Part II. of the recent Act, 41-2 Vict. c. 77 (a). The Secretary of State (now the Local Government Board, under the Public Health Act, 1875, Sched. V.) has power to prohibit their use under certain circumstances. Every locomotive must be constructed to consume its own smoke, and any person using one not so constructed, or not fulfilling this condition as far as practicable, is liable to a penalty of £5 per day (41-2 Vict. c. 77, s. 30). The rules and regulations provided by the

(a) The word 'locomotive' is defined or rather explained by the Act as meaning 'a locomotive propelled by steam or other than animal power.' A tricycle fitted with a miniature steam-engine as auxiliary to the usual treadmill was recently invented by Sir Thomas Parkyns. A more innocent 'locomotive' it would be difficult to imagine. The machinery was so ingeniously devised and concealed, that (as was admitted) there was no smoke, nor escape of steam into the air, nor anything to indicate the presence of steam power, or calculated to frighten horses, or to cause more danger to the public using the highway than would any ordinary tricycle. It does not appear to have been capable of any excessive speed. Lord Coleridge, however, confirmed a conviction under the above Acts, Sir Thomas having ventured upon the road without an escort of two persons, and having driven through Woolwich at the rate of more than two miles an hour; *Parkyns v. Priest*, July 4, 1881, 7 Q. B. D. 318. No carriage, therefore, of any description, propelled either by clockwork, electricity, compressed air, or a flying jib, is entitled to the freedom of the Queen's highway.

28-9 Vict. c. 83 are shortly as follows :—(1) Three persons at least must accompany each locomotive ; (2) one of whom is to precede it on foot with a red flag. [By the recent Act (sec. 29) the use of this danger-signal is abolished. The person is to precede his engine on foot by 20 yards at least, ‘ and shall in case of need assist horses, or carriages drawn by horses, passing the same.’ In a recent case it was held that this provision was sufficiently complied with where the man on foot was 60 yards in advance and leading a pony-cart, *Davis v. Browne*, C. P., Mar. 14, 1879 ; 43 J. P., 416.] (3) Driver to give as much space as possible. (4) Not to whistle within sight of a horse, nor blow off steam on the road. (5) To stop upon any person with a horse putting up his hand as a signal ; and (6) to carry proper lights. No locomotive is to travel at the rate of more than 4 miles an hour, or more than 2 in any town or village. Penalty on owner, upon summary conviction before two Justices of any of the above offences, £10, recoverable by him from the person in charge, on proof that he incurred the same through such person’s negligence, &c.

By 41-2 Vict. c. 77, s. 28, certain provisions are made with respect to the size, weight, and wheels of road-locomotives. No such engine must exceed 9 feet in length or 14 tons in weight, nor must the driving wheels, if over 5 feet in diameter, be less than 14 inches wide in the tire. Such wheels must be in all cases smooth-soled, or shod with diagonal cross-bars of not less than 3 inches in width, nor more than three-quarters of an inch in thickness, extending the full width of the tire, and not more than 3 inches apart. Penalty for each contravention £5.

Any County Authority, and certain other powers, may authorise the use of larger locomotives within their several jurisdictions, and may make bye-laws as to the hours during which locomotives in general may pass over their roads. And a County Authority may make bye-laws for granting annual licences to machines of this description, except those used

solely for agricultural purposes, employed within their county (secs. 28, 31, 32).

SUNDRY HIGHWAY OFFENCES.

[See DRIVING AND RIDING.]

The surveyor, or any person acting under his authority, and perhaps any other person witnessing any of the following offences, may arrest an 'unknown' offender, and take him before a Justice (Highway Act, sec. 79). No information in writing is necessary, and two Justices may hear and determine the matter (sec. 101). Penalty, half to the informer, half to the surveyor towards the repairs (sec. 103). Appeal to Gen. or Quarter Sessions (see page 73).

Offences (abridged).—Riding, leading, or driving any horse, ass, sheep, cattle, or carriage of any description, or any truck or sledge, upon any footpath by the side of any road, set apart for foot passengers—tethering any horse, &c., on any highway—injuring any highway or the hedges or fences—wilfully obstructing the passage of any footway—pulling up, removing, or damaging posts or stones fixed by the surveyor—damaging bridges or milestones—playing at football or any other game to the annoyance of any passenger—making any fire, &c., or firing any gun (see FIREWORKS)—hawker, gipsy, or other person travelling, pitching tent or stall, or encamping upon any part of the highway—laying any timber, stone, manure, rubbish, or other matter or thing whatsoever upon the highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon—or in any way *wilfully obstructing* the free passage of such highway, (*Gully v. Smith*, 53 L. J. M. C. 35) 40s. and damage, recoverable by distress (sec. 72).

Obstructions.—Every unauthorised obstruction of a highway is *prima facie* a nuisance at Common Law and indictable as such. It can only be justified upon the ground of paramount necessity, or sudden emergency, *R. v. Langton Gas*

Co., 29 L. J. M. C. 118. As respects the right of a private individual to abate a highway obstruction, see title NUISANCE, page 328. Any person unlawfully placing upon a highway what may be a source of mischief will be held responsible for an accident, even if such accident take place after it has been shifted from its original position by another party, *Clark v. Chambers*, April 15, 1878, 3 Q. B. D. 327. In *Harris v. Mobbs*, June 18, 1878, 3 Exch. D. 268, the owner of a steam-plough which had been left on the grass at the side of a highway was held liable, under Lord Campbell's Act, for damage caused by the shying of a passing horse. 'It must not be assumed,' observed Denman, J., 'that no nervous, runaway, or kicking horse will come along a highway. It is only in the case of horses liable to be frightened that danger exists. The wrong-doer has no right to lay down the measure of his own wrong, or to limit the free use of the highway to quiet horses, or to horses which shall only shy when frightened, and do no further mischief.'

See also DRIVING AND RIDING, and CATTLE STRAYING.

HOUSEBREAKING is the breaking and entering another man's house with intent to commit a felony. In order to constitute this offence, the breaking must amount to a substantial act, such as breaking or taking out the glass of, or otherwise opening a window, unlocking, or even lifting the latch of a door, or unloosing any fastening which the owner has provided. But if a person be negligent enough to leave his door or window open, it is no breaking to enter. Even in this case, however, if the trespasser afterwards unlatch an inner or chamber door, the breaking is complete. As regards the entering, a simple insertion of the hand or any instrument is sufficient. The place with respect to which the offence may be committed will be found sufficiently indicated below. Lastly, the entrance must be with a felonious intent, as evidenced by the general circumstances

of the case ; otherwise the act amounts to a mere intrusion—see TRESPASS.

Breaking and entering another man's dwelling-house with felonious intent *in the night-time* is a crime of deeper dye, and constitutes the Common Law offence of BURGLARY.

Under 24-5 Vict. c. 96, sec. 54, it is not necessary that there should be any actual or constructive 'breaking ;' the mere entrance with felonious intent being in itself heavily punishable. And the breaking out at night, under certain circumstances stated below, after an entry effected at any previous hour, exposes the offender to the full punishment due to the principal offence.

Under the statute above cited (sec. 1), the word 'night' includes the period between 9 p.m. and 6 a.m. 'No building' (sec. 53), 'although within the same curtilage with any dwelling-house, and occupied therewith, is to be deemed to be part of such dwelling-house, unless there shall be a communication between them, either immediate, or by means of a covered and enclosed passage.'

The following offences are felonies, except the misdemeanours marked 4. Triable at sessions, except 5 and 6. Bail 'discretionary.'

24-5 VICT. c. 96.

1. (Sec. 55). Breaking and entering any building within the curtilage of a dwelling-house and occupied therewith, but not part thereof, and committing any felony therein, or breaking out after committing felony [Pen. S. 5—14 y. ; or impr. 2 y.].
2. (Sec. 56). Breaking and entering any dwelling-house, school-house, shop, warehouse, or counting-house, and committing, &c., or &c., as above [same].
3. (Sec. 57). Breaking and entering any dwelling-house, church, &c., building within curtilage, school-house, shop, &c., *with intent* to commit felony [Pen. S. 5—7 y. ; or impr. 2 y.].

4. (Sec. 58). Being found *by night* armed with any dangerous weapon, with intent to break or enter any dwelling-house or other building and commit felony therein—or having in possession, without lawful excuse, any picklock, crow, &c., or other implement of housebreaking—or with face blackened or disguised, with intent to commit felony—or in any dwelling-house or other building whatever, with like intent [Pen. S. 5 y.; or impr. 2 y.], or if after previous conviction for felony or this offence [Pen. S. 5—10 y.; or impr. 2 y.]. As to these or similar offences committed *in the day-time*, see VAGRANTS, 18, 19.
5. (Sec. 52). BURGLARY—*i.e.*, breaking and entering the *dwelling-house* (a) of another in the night, with intent to commit felony [Pen. S. 5 y.—Life; or impr. 2 y.].
6. (Sec. 51). Entering dwelling-house with intent to commit felony—or being therein committing felony, *and* in either case breaking out of house in the night [same].
7. (Sec. 54). Entering any dwelling-house in the night with intent to commit felony [Pen. S. 5—7 y.; or impr. 2 y.].

‘If any person attempts a robbery or murder of another, or attempts to break open a house *in the night-time*, and shall be killed in the attempt, the slayer is in no kind of fault whatsoever, not even in the minutest degree; and is, therefore, to be totally acquitted and discharged, with commendation

(a) A dwelling-house is a building in which the occupier or his family habitually reside and sleep; and the mere temporary absence of inmates does not deprive it of its peculiar sanctity as such. Burglary may be committed in respect of the chamber of a guest at an inn, college rooms, or the apartment of a lodger. If a servant conspire with a robber to let him in at night, it is *constructive* breaking, and burglary in both. And where one man stands on the watch, while his comrade enters, both are equally burglars. A lodger, as pointed out by Lord Bramwell upon a recent occasion, who walks off with another man’s coat before six in the morning, thereby ‘breaks out’ of the lodging-house (*suprà*, offence 6) and is guilty of burglary.

rather than blame.' Blackstone, IV. Ch. 14; and see MURDER AND MANSLAUGHTER, page 324.

HUSBAND AND WIFE. 'With this ring I thee wed. With my body I thee worship. With all my worldly goods I thee endow.' Of these truly remarkable assertions, it has been tersely said that the first is superstitious, the second idolatrous, and the third false. At any rate, as read under the austere light of the Common Law, they stand seriously in need of a commentator.

The first two mean that the woman is wed and worshipped to such excellent purpose that she has no longer any independent legal existence worth talking about. No promise made to her by her husband before marriage remains binding; not even the most solemn compact with reference to the religious education of her future children, *Re Agar-Ellis*, Nov. 23, 1878, L. R. 10 Ch. D. 49. No binding promise, after marriage, can be made at all. She is sworn to obey the will in which she has merged her own; and the law, with contemptuous indulgence, excuses her from the consequences of certain crimes, if committed by the direction, or in the company, of her lord. The latter, moreover, as being answerable for her good behaviour, was at liberty to administer such personal correction as in his superior wisdom he might consider proper for her education. And although he can no longer be said to possess this privilege, he has lost it purely through a silent change in the spirit in which we administer the great unwritten code. So much for the idol.

The words 'with all my worldly goods I thee endow' are easily explained. They mean, or rather meant, until 1882, that, immediately upon marriage, the smooth-spoken hypocrite takes from her every article of personal property which she possesses at the time, or can by any possibility acquire afterwards, subject to no liability in return, except that of keeping her off the parish. His own 'worldly goods' he may bequeath at his death to a mistress or a stranger,

together with every sixpence of what was once her private fortune. He is under no sort of obligation to provide for such a thorough supernumerary in the way of celestial enjoyment as the widow he may leave behind him.

The complacency with which Common Law Judges administered this appalling creed was not shared by Courts of Equity. The latter could not, indeed, Christianise the law, but they could and did insist that a wife was capable of holding property apart from her husband (irrespective of the intervention of trustees), and that if any money fell to her during marriage which was intended for her separate use, and ought in righteousness to belong to her alone, she was to be at liberty to keep and spend it.

The assistance of the Court of Chancery, however, like that of eminent medical men, is not to be expected in small cases and by people of no private means. Modern legislation has, consequently, come to the aid of the wife in some important particulars. Previously to the 20-1 Vict. c. 85, a man might give additional zest to his Common Law rights by abandoning his wife to her own unaided exertions, returning occasionally to plunder her of whatever she might have thus acquired during the interim. He had a right to demand her wages from any person who had employed her, and was only obliged, for his own sake, to stop short of driving her to the Union.

Order to protect a wife's earnings and property.—

Under the above Act (sec. 21) 'a wife deserted by her husband may, at any time after such desertion, apply . . . to Justices in petty sessions . . . for an order to protect any money or property she may acquire, by her own lawful industry, and property which she may become possessed of, after such desertion, against her husband or his creditors. . . . And such Justices . . . if satisfied of the *fact of such desertion*, and that the same was *without reasonable cause*, and that the wife is *maintaining herself by her own industry or property*, may make and give to the wife an order protecting

her earnings and property acquired since the commencement of such desertion,' &c., which are to 'belong to the wife as if she were a *feme sole*.' Power is given to the husband or his creditors to apply for a discharge of this order (27-8 Vict. c. 44), but in the meanwhile, should he or they seize or continue to hold any of her property after due notice, she may recover by action not only such property but double its value into the bargain.

Married Women's Property Act, 1882.—Here 'the old order changeth, yielding place to new.' The whole status of the married woman, with regard to property, has been revolutionized to an extent which it will be for the next generation to appreciate. Protection orders, as above described, will probably pass into disuse. Indeed, should any husband, after the 1st of January, 1883, while living apart from his wife, lay hands upon her private money or earnings, or extort them, whether by force or dint of threat, she may lock him up for larceny and indict him at Quarter Sessions. The recent statute repeals two Acts of similar title, dated 1870 and 1874, which it purports to consolidate and amend, and so far as concerns our present purpose provides as follows:—(see 45-6 Vict. c. 75, ss. 1, 2, 5, 12, 16).

1. 2. Every woman whose marriage took place in or after 1883, is entitled to hold and dispose of, as if she were unmarried, all property of every description which either belonged to her at the time of her marriage or which she did or may afterwards acquire, 'including any wages, earnings, money and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband or by the exercise of any literary, artistic, or scientific skill.'

5. Every woman married before the 1st of January, 1883, is entitled to hold and dispose of as above all property which has accrued or may accrue to her after that day, including any wages, earnings, &c., as above.

12. Every woman, whenever married, may bring civil or

criminal proceedings in her own name against any person, including her husband, for the protection and security of her separate property. In any indictment or other proceeding under this portion of the Act it is sufficient to allege such property to be her property; and husband and wife may give evidence the one against the other. But no wife may take criminal proceedings against her husband in respect of property while they are living together; 'nor, while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.'

16. 'A wife doing any act with respect to the property of her husband, which, if done by the husband with respect to the property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband'; in which case the husband may give evidence against the wife, and *vice versa*, (47-8 Vict. c. 14).

Summary Judicial Separation.—By the 'Matrimonial Clauses Act, 1878' (41 Vict. c. 19), a novel and unexpected duty was cast upon Courts of Summary Jurisdiction. It is enacted (sec. 4) that if a husband shall be convicted, summarily or otherwise, of an aggravated assault upon his wife [see ASSAULT, offence 2], 'the court or magistrate *before whom he shall be so convicted* may, if satisfied that the future safety of the wife is in peril, order that she shall be no longer bound to cohabit with her husband, and such order shall have the force and effect in all respects of a decree of judicial separation on the ground of cruelty; and such order may further provide':—

- (1) for payment by the husband to the wife of a weekly sum, to be fixed by the court, payment to be enforced as if under an order of affiliation—see page 100;
- (2) for the custody of children under 10; such custody

(in the discretion of the court) to be given to the mother.

No order is to be made in favour of a wife proved to have committed adultery (unless condoned), and any order made is to be discharged upon proof of subsequent adultery.

Criminal Liability of Wife.—According to a superstition which, Blackstone tells us, is upwards of a thousand years old, if a woman commit theft, burglary, or other like *indictable* offence in company with her husband, she is to be considered as acting under his coercion and treated as irresponsible. But murder or manslaughter are not thus to be excused. This venerable doctrine would at last have had its day if the Criminal Code Bill of a recent session had become law of the land. As regards *non-indictable* offences, cognisable under summary jurisdiction, a married woman has always been held answerable for herself. A husband and wife, if joint offenders, may be jointly charged, and jointly or severally convicted. But, in any case, if a wife be sentenced to a fine, she must pay or provide her own penalty, or undergo the alternative imprisonment, as her husband's goods cannot be levied upon for the amount.

Stealing from the Husband.—A wife living with her husband cannot be convicted of stealing his goods; nor if she give them to a third party can the latter be charged with theft. The presumption is that she had authority for what she did. But this inference may be rebutted, so far as the receiver is concerned. It does not even arise if she elope with him, and they carry off between them any part of the husband's property, which would be simple theft upon the adulterer's part. *R. v. Flatman*, C. C. R. Feb. 28, 1880.

See EVIDENCE, pages 181, 184.

INDECENCY. A case of singular and audacious indecency came before the bench the other day. It was the story told of Susanna, but the scene was not in a garden. There was no power to punish either offender in a summary manner, with-

out straining the law, so far as it provides for offences of this kind. The *only* provisions which touch indecent conduct in general are (1) the 5 Geo. IV. c. 83, s. 4 (see VAGRANTS, 12), which enacts that 'every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in the view thereof, or in any place of public resort, *with intent to insult any female*,' shall be liable as a rogue and vagabond to three months' hard labour; (2) the 10 & 11 Vict. c. 89, s. 28 (see POLICE OF TOWNS, 4), which provides that 'every person who in any street [*i.e.* any road, square, court, alley, thoroughfare, or public passage—but not in any spot from which the public may be shut off by the owner of the soil] to the . . . annoyance . . . of the residents or passengers . . . wilfully and indecently exposes his person,' is liable to a fine of 40s., or, at the discretion of the Justices, to 14 days' imprisonment without hard labour.

The section just cited provides for the case of prostitutes behaving indecently; and they may also be dealt with under the Act of Geo. IV. (see VAGRANTS, 4); and, within the Metropolitan Police District, under 2 & 3 Vict. c. 47, s. 54.

The mere use of obscene language is no Common Law offence, our forefathers not having been fastidious in this respect, even in royal circles. Its public use, however, is now punishable (see POLICE OF TOWNS, 4), which also provides for the case of indecent prints, &c., publicly exhibited. See also VAGRANTS (11), and 2 & 3 Vict., *suprà*, under which the scribbling of filthy words on walls (page 349) may likewise be discouraged.

Indictable Offences.—Every act of indecency committed in public is an indictable misdemeanour at Common Law. Upon this point see *R. v. Wellard*, C. C. R. Nov. 29, 1884, 54 L. J. M. C. 14. A power of dealing summarily with cases of this description, where, as in the matter of indiscreet bathing, they call rather for prompt repression than the unwieldy terrors of Quarter Sessions, is very much

to be desired (see also DISORDERLY CONDUCT). In the same category stands the offence of printing, publishing, distributing, or offering for sale indecent books, prints, &c., which are very properly made liable to destruction at the fountain-head ; see OBSCENE BOOKS.

It is no offence, in itself, for a man to exhibit himself in female attire ; but it is an act *contra bonos mores*, and two or more persons appearing in public disguised in this way, as a joint act, are liable to indictment. See CONSPIRACY, and ASSAULT, Offences 6, 7.

INDICTMENT. The process of committal for trial detailed in Chapter IV. is by no means the only road to an indictment. As a general rule, an indictment may be preferred for any offence at any court having authority to try it, without the previous ceremony of an investigation before a Justice. The exceptions to this rule are created by the 'Vexatious Indictments (Lord Campbell's) Act,' 22-3 Vict. c. 17, which provides (sec. 1) that no bill of indictment shall be presented to a grand jury for the misdemeanours of perjury, conspiracy, false pretences, keeping a gambling or disorderly house, indecent assault [or libel, see 44-5 Vict. c. 60, sec. 6], unless the prosecutor has been bound over to prosecute or give evidence (see page 29), or the accused has been committed or bound over to answer an indictment, or certain other preliminary steps have been taken. And, by section 2, where a person is charged before a Justice with any of the above offences, and such Justice refuses to commit the accused for trial—then, in case the prosecutor desires to prefer an indictment, the Justice *is bound* to take his recognisance to prosecute the charge, and to transmit the same with the depositions (if any) to the court in which such indictment ought to be preferred, exactly as if he had himself committed the accused in the usual form. See further 30-1 Vict. c. 35.

'We doubt,' observe the Criminal Code Commissioners

(Report, page 32), 'whether the existence of a power to send up a bill before a grand jury, without a preliminary inquiry before a magistrate, the extent of the power, and the facilities which it gives for abuse, are generally known.' The passage is too long to cite, but it points out that any person may go before a grand jury, and charge another, behind his back, with some atrocious crime; that his witnesses would be examined in secret, without responsibility, no record being kept of their evidence; that, upon a *prima facie* case being shown, the accused would be arrested upon warrant and committed until the next assizes, without bail; and that in the meantime he would have no right to see the indictment, or even to learn the nature of the evidence or the names of the witnesses, until he actually stood in the dock. They may manage these things better in France, but hardly worse in Warsaw.

INDUSTRIAL SCHOOLS are defined by the Act of 1866 bearing that name (29 & 30 Vict. c. 118) to be schools in which industrial training is provided; and in which children are lodged, clothed, and fed, as well as taught. The managers of such a school may, under certain conditions, obtain the certificate of the Secretary of State that the school is fit for the reception of children to be sent there under the above Act, and the school thereupon becomes a Certified Industrial School. Provision is made for the contribution of public money towards the establishment, enlargement, and maintenance of such schools, as well as for their internal discipline and periodical inspection.

Justices may order a child to be sent to a Certified Industrial School although not within their own jurisdiction, provided the managers be willing to receive him. Regard is to be had to the child's religious persuasion, which is to be specified in the order. The time during which he is to be detained must likewise be mentioned; having regard to the fact that he cannot, except with his own consent in writing, be kept there after the age of 16. Pending inquiry respect-

ing him, or communication with the authorities of the proposed school, two Justices may direct that he be conveyed to the workhouse of the union or parish in which he may be resident or was found, the guardians of which are bound to receive and detain him for not more than seven days, or until an order be sooner made respecting him.

Power is given to the managers of these schools to allow any child, after a certain amount of training, to reside on licence outside the school with respectable and trustworthy people ; and if he conduct himself well during this probation they may apprentice him, with his own consent, to any trade or service, notwithstanding that his period of detention has not expired.

The parent, or other person legally liable to maintain any child detained for the time being in an Industrial School, is bound, if of sufficient ability, to contribute to his maintenance there. And two Justices, having jurisdiction in the place where such person resides, may, upon complaint of the Inspector of Industrial Schools, summon such person before them, and inquire into his ability to maintain the child, and, if they think fit, make an order for payment by him to the Inspector of such sum, not exceeding 5s. per week, during the whole or any part of the period for which the child is detained, as they may consider reasonable. These payments are recoverable as 'civil debts,' see page 44.

The following classes of children may be detained in Industrial Schools (sec. 14) :—

1. *Any person* may bring before two Justices, for the exercise of their discretion in the matter, any child, apparently under 14, found begging (either actually, or under pretext of offering things for sale) or being in any public place for the purpose of begging—or wandering without home, or destitute orphan, &c.—or frequenting the company of reputed thieves—or (43-4 Vict. c. 15), living with prostitutes, or in a house frequented by prostitutes, or frequenting their com-

- pany; *Hiscocks v. Jermonson*, 52 L. J. M. C. 52
(See also, as to the children of a woman twice convicted of crime, 34-5 Vict. c. 112, s. 14.)
2. Child, apparently under 12, charged with some offence punishable by imprisonment, or less punishment, but who has not been convicted of felony.
 3. Child, apparently under 14, complained of by parent as beyond control;
 4. Or refractory in a workhouse, &c.
 5. Under the Education Acts; see page 167.

It will be seen from the above that it is a mistake to associate the brand of criminality with the children who are educated and restored to society by these most useful institutions. Homelessness and destitution entitle them to the stern but kindly shelter. Many of these 'warped slips of the wilderness' have never been convicted at all. Even the little thief, 'apparently under 12,' in trouble for the first time, need not be a very formidable or irreclaimable offender. Be that as it may, the fruits of firm discipline and systematic training are, fortunately, not matter of speculation. The following are the results of the discharges of 4419 boys from the Industrial School at Feltham during twenty-three years ending the 1st of January, 1882, as ascertained two years after each discharge.

Dead	.	.	.	.	1·17	per cent.
Doing well	.	.	.	.	85·85	„
Doubtful	.	.	.	.	4·55	„
Reconvicted	.	.	.	.	5·40	„
Unknown	.	.	.	.	3·03	„
						<hr/>
						100·0

As regards reconvictions, the Chaplain of Coldbath Fields prison in a recent report, speaking of boys who have passed through Feltham, writes:—'Boys who relapse into crime

are almost invariably those who are *claimed by their parents* after completing their time at Feltham, or are persuaded by their friends to abandon the employment found for them by the school authorities and to stay at home.' We did all we could. But our authority ceases at sixteen.

INFANT LIFE PROTECTION. The very useful enactment bearing this name (35-6 Vict. c. 38) should be universally known and enforced. It provides that no person shall receive for hire or reward *more than one* infant (except in the case of twins) under the age of one year, for the purpose of nursing or maintaining them apart from their parents, for more than twenty-four hours, except in a registered house. The Act does not extend to relations or guardians, nor to public institutions, &c.

The Local Authority, *i.e.*, in counties the Justices of the petty sessional division, in boroughs the Council, in the metropolis the Board of Works, and in the city the Common Council, are empowered, after careful inquiry as to fitness, to register houses and persons for the above purpose (registration gratis—renewable annually), and from time to time to make bye-laws for fixing the number of infants which may be received into each such house. The Board of Works make a special bye-law upon each individual application, which seems the proper practice.

Every person receiving infants as above is bound to register the name, age, and sex of each, with full particulars of receipt, &c., and to produce such register when required by the Local Authority; and, in the event of death, to give notice to the Coroner within twenty-four hours.

Penalty for any offence against the Act, or any bye-law, not exceeding £5. Or six months' imprisonment may be awarded, without the option of a fine, except in the matter of not keeping a proper register. Name and house of offender, if on register of Local Authority, may be struck off. Two Justices. No appeal, unless imprisonment be ordered.

INFORMATION. The nature and purpose of this document have already been described (see page 9, and Appendix I.). We will only here note that, under the Summary Jurisdiction Act (sec. 39), any exemption, proviso, excuse, or justification, contained in an Act or bye-law, may be proved by a defendant, if relied upon by him; but need not be negatived in advance by the Information. If, however, such matter *be* specially negatived, no further proof in that respect is to be required upon the part of the prosecution.

INTOXICATING LIQUOR LAWS. The general control of that immense department of our social system, the retail liquor traffic of the country, being almost exclusively in the hands of Justices, renders it necessary to treat the present subject at some length. But it would be vain within the limits of these Notes to attempt more than a sketch of its main outlines. We will endeavour to satisfy, with a bird's-eye view, the curiosity of people who may wish to obtain some insight into the matter without much trouble, and to facilitate the task of those whose business it is to master it in detail.

The recent Licencing Acts of 1872 and 1874, 35-6 Vict. c. 94, and 37-8 Vict. c. 49, which established and consolidated the existing system, will be referred to when necessary by their dates—'72 and '74.

An analysis of the following Note will be found in the Index.

LICENCES IN GENERAL.

Without concerning ourselves with the previous history of the liquor traffic in general, we may commence by stating that an Excise licence, without which no intoxicating liquor may be sold, can never, as a rule, be granted for its sale *by retail*, except upon production of a Justices' licence for that purpose. Moreover, if at any time, and for any reason, the latter licence happens to become forfeited or void, the secondary or Excise licence instantly shares the same fate,

and is of no further efficacy whatever, ('72, sec. 63). With the Excise licences taken out by *wholesale* dealers, Justices have no concern.

There are no less than twelve distinct varieties of licence issued by the Excise for retail trade, differing according to the nature of the drink, the business of the vendor, and his intention to sell it for consumption, either *on* or *off* the premises. An 'on' licence covers consumption either way.

1. Victualler's or full publican's licence, to keep an inn, &c., and to take out excise licences as below*. See Appendix XVIII., page 471.

2. Beer-house licence, including cider, *on*.

3. Cider-house, ditto, *on*.

4. Wine-house, ditto (refreshment rooms, &c.), *on*.

5. Sweets, *i.e.*, British wines, mead, &c., *on*.

6. Beer and cider, *off*.

7. Wines, British and foreign, *off*.

8. Wholesale beer-dealer's additional (retail) licence, *off*.

9. Table beer (under $1\frac{1}{2}d.$ per quart), *off*.

10. Wholesale spirit-dealer's additional (retail) licence, *off*.

11. Wholesale spirit-dealer's liqueurs (foreign) licence, *off*.

12. Licence to sell sweets (*i.e.*, British wines, &c.), *off*.

One Justices' licence is sufficient in the case of a person wishing to take out simultaneously two or more of the above—but it must specify those to which it is intended to apply ('74, sec. 23), as well as the place in which the business is to be carried on.

*Under No. 1, the publican may take out, if he pleases, four different Excise licences issued specially with reference to his own calling, and covering respectively the retail sale, on or off, of beer, spirits, foreign wines, and sweets.

Licence No. 2 cannot be held conjointly with a spirit licence; nor may the beer-house keeper allow spirits in any form to be consumed upon his premises. But he may take out No. 4, for wine, if it suits his convenience.

The retail licence, No. 7, does not need Justices' sanction in the case of those who already hold a wholesale wine merchant's licence. *Palmer v. Thatcher*, 42 J. P. 213.

The beer-dealer's additional licence, No. 8, is taken out by wholesale strong beer dealers who wish to sell by retail, *i.e.*, less than four and a half gallons at a time.

The spirit-dealer takes out his additional licence, No. 10, in order to sell spirits retail, in *not less* quantity than one reputed quart, or foreign liqueurs in bottles as imported. But he need not take out a Justices' licence if he deal in nothing but intoxicating liquors.

It would be inconsistent with our limited space to attempt special details with regard to these different forms of traffic. We can only pretend to sketch the general law, which licences all alike, and provides a system of rules, the application of which to the various licences it will not be difficult to follow.

LICENCING AND LICENCES.

Granting of licences.—Before we proceed to consider the steps to be taken towards obtaining a Justices' licence, it must be premised that certain acts of previous misconduct may be an insuperable and permanent bar; and that the general character of the applicant is always an important feature in the case. Apart from this personal element, no premises, since 1872, are qualified to receive a licence for 'on' consumption unless, in the opinion of the licencing authority, structurally adapted to the intended business, nor, in the case of licences Nos. 1, 2, 3, 4, 5, 6, and 8, unless of a certain annual value ('72, sec. 45). Thus the premises of a licenced victualler within four miles of Charing Cross, or in a town with 100,000 inhabitants, must be of the annual value of £50; in a town with 10,000 inhabitants, £30, and elsewhere £15.

Licences 6 and 8, beer 'off' and 'additional beer,' can only be granted in respect of annual value of £15, in a town with a population of over 10,000; £11 when over 2,500; and £8 elsewhere.

A special session of the Justices acting in every petty sessional division throughout England, called the 'General Annual Licencing Meeting,' takes place between the 20th of August and the 14th of September (in Middlesex and Surrey during the first ten days of March), at which the Justices may grant licences for the purposes of liquor-traffic to such persons as they may 'in the exercise of their discretion deem fit and proper' (9 Geo. IV. c. 61).

During recent times, however, the candidate for a Justices' licence to keep a **beer-house**, or to retail wine, has been entitled to it almost as matter of right in cases where the drinking was to be 'off the premises.' No such application could be refused, unless upon one or more of the four following grounds, viz. (1) Insufficient evidence of good character; (2) House or its belongings disorderly; (3) Previous liquor-licence forfeited through misconduct; (4) Applicant not duly qualified; *i.e.*, not 'the real resident holder and occupier of the dwelling-house in which he shall apply to be licenced,' (in the case of beer), or the house not of the value above mentioned (3 & 4 Vict. c. 61, s. 1, and 32-3 Vict. c. 27, s. 8).

The first exception to this privilege was made in the case of applicants for licence No. 8; *i.e.*, holders of wholesale strong-beer licences seeking the additional, or retail, licence for *off* consumption. Under the 43 Vict. c. 6, (Mar. 19, 1880), Justices are 'at liberty to refuse such licences on any grounds appearing to them, in the exercise of their discretion, sufficient.'

Under the 'Beer-dealers Retail Licences Amendment Act, 1882' (46 Vict. c. 6), the privilege, so far as regards beer-houses, was entirely swept away. 'Notwithstanding anything in section 8 [*supra*] or in any other Act now in force, the licencing Justices shall be at liberty, in their free and unqualified discretion, either to refuse a certificate for any licence for sale of beer by retail to be consumed off the premises, on any grounds appearing to them sufficient, or to grant the same to such persons as they, in the execu-

tion of their statutory powers and in the exercise of their discretion, deem fit and proper.' And (sec. 2), 'certificates for any such licences as aforesaid shall . . . be granted at general annual licencing meetings, and not at any other time.' A 'free and unqualified discretion' may not only be exercised in refusing original applications for these certificates, but in respect of applications for their 'renewal'; *R. v. Kay (re JJ. of Over Darwen)*, Q. B., Nov., 1882, 52 L. J. M. C. 90. In the event, however, of a refusal to renew, appeal lies to Q. Sessions, *Downing v. Shneider*, 52 L. J. M. C. 51.

Any person may oppose the granting of any licence.

In boroughs, licences are granted by the borough Justices as a body, should they be fewer than ten in number. Otherwise a committee of not more than seven is appointed among themselves for the purpose ('72, sec. 38).

Provision is made for ensuring notice of this meeting or any adjournment thereof to all concerned. Every such adjourned meeting must be held not later than the end of September (or within the month of March in Middlesex and Surrey).

Every person intending to apply for a licence in respect of premises previously unlicensed, must give public notice of such intention by advertisement, &c. ('72, sec. 40). He will then attend in person at one of the above meetings, when the majority of the Justices present, if satisfied as to his fitness, *and that of his intended house*, will grant his licence ('72, sec. 9). They have an absolute discretion in the matter, except as above noticed, and in the event of their refusal there is no appeal. A publican's licence runs to the 10th of October (in Middlesex and Surrey, to the 5th of April) in the year succeeding that of the date of grant. All other licences, for one year from the date of grant. The house, it will be perceived, is licensed as well as the publican. Consequently the latter has no right to open any substantial *addition* to his premises, between licencing days, or he may be convicted of selling in the new part without a licence. See *Mahon v. Gaskell*, Q. B., June 1, 1878; 42 J. P. 582. The

question whether the premises remain substantially the same is a question of fact—not of law. ‘It requires local knowledge to decide these cases, as to which Justices are made by law the judges. The court will not review questions of fact which have been determined by Justices,’ *Ballam v. Wiltshire*, Q. B., Dec. 6, 1879, 44 J. P. 74.

Confirmation of Licences.—Every new licence, unless for consumption *off* the premises, must pass through yet another stage before it becomes a valid and effectual instrument. It must receive the confirmation of a County or Borough Licencing Committee. Such committee is appointed annually in counties by the Justices in Quarter Sessions, and consists of from three to twelve members ('72, sec. 37). In boroughs, the whole body of Justices, if ten or more, act as a confirming power. If fewer than ten, a joint committee is established for the purpose, composed of three of themselves and three Justices of the county in which the borough is situated ('72, sec. 38).

Any person who has appeared before the licencing Justices and opposed the grant of a new licence, and no other, may oppose its confirmation by the above authorities. ('72, sec. 43.) From their decision there is no appeal. See *Ex parte Lindsay: Reg. v. Middlesex Licencing Committee*, 42 J. P. 469.

Provisional Licence.—Any person may apply for the provisional grant and confirmation of an *on* licence for a house either then building or about to be built, in which he is interested. The proceedings will be similar to those necessary in taking out a new licence. Both the licencing and confirming Justices must be satisfied with the plan of such house; and, when it has been erected, the former, if content with the result, may declare such provisional grant and confirmation to be final ('74, sec. 22).

Renewal of Licences.—A licence, being as we have seen of the nature of an annual, requires to be renewed at each subsequent general annual meeting. No previous notice is

necessary, neither need the applicant attend in person, unless required so to do by the licencing Justices 'for some cause personal to such licenced person.' Objectors must announce their coming seven days before. A renewed licence does not require confirmation either by the County or Borough Committee. Justices have an absolute discretion (subject however to the right of appeal) in dealing with any objection which may be raised to the renewal of a publican's licence, or of a licence for the sale of beer off the premises, or of a wine or beer-house on licence granted since 1869. They can only refuse to renew wine or beer-house on licences of earlier date, or wine licences for consumption off the premises, upon one of the four grounds above referred to in connection with the grant of the beer house off licence, at page 262. ('72, sec. 42; '74, sec. 26; 32-3 Vict. c. 27, sec. 19).

Transfer of Licences.—When a licenced person is desirous of removing from his premises, and of making them over to a new tenant in the interval between two General Annual meetings, he may avail himself of one of the Special Sessions held for this particular purpose. These sessions are convened from four to eight times during the year, upon days appointed at the Annual Meetings (9 Geo. IV. c. 61, sec. 4). The applicant must attend in person, having previously given fourteen days' notice of his intention to the overseers of the parish, &c., and to the Superintendent of Police. Justices have full power to grant or refuse his application. Again (sec. 14), owing to a variety of circumstances which may occur, such as the sickness, death, or disqualification of a licensee, or the pulling down his house for public purposes (see *R. v. Justices of Northumberland*, Q. B., Mar. 20, 1879), or its becoming by fire, &c., unfit for use, it may be necessary to transfer his licence, or, more correctly, to grant a substituted licence to some other person, or so as to cover some other premises than those originally licenced. This may be effected at one of the Special Sessions above referred to, even after the expiration of the original licence; see *R. v. JJ. of Liver-*

pool, July, 1883, 52 L. J. M. C. 114. As regards the persons to whom, in particular contingencies, a fresh licence may be granted reference must be made to the section just cited.

Temporary Transfers—Protection Order.—Under the 5 & 6 Vict. c. 44, Justices in petty sessions are empowered to authorise a temporary transfer, in cases where a change of occupancy is brought about during the interval between two of the special sessions above referred to. The result is to give the applicant protection in carrying on the business until the next special session, when the application for a transfer must be heard and decided upon in the regular way. The representatives of a licenced person dying or becoming bankrupt before the expiration of his licence are *ipso facto* protected during this interval ('72, sec. 3). In cases where any licenced person is convicted for the first time of certain offences disqualifying him from holding a licence, or entailing its forfeiture, the owner of the house may apply for such temporary protection ('74, sec. 15).

Removal of Licences.—Licences may under certain circumstances be removed from one part to another of the same licencing district, or to another licencing district in the same county. An application for this purpose must be made at a General Annual Licencing Meeting. The consent of the Justices is by no means a matter of course; and no order made by them is valid until approved by the confirming authority of the licencing district ('72, sec. 50).

Six-day and Early-closing Licences.—Upon any application for a new licence for consumption on the premises, or for the renewal of an existing one, a condition may be inserted, if desired, that such premises shall be kept closed during the whole of Sunday; or that they shall be closed at night one hour earlier than the regular time. In either case, the holder is entitled to a remission of one-seventh of the Excise duty; and he may avail himself of the double privilege if so disposed ('72, sec. 49, and '74, sec. 7).

Occasional Licences.—The local authority of any licencing district, *i.e.*, the Commissioners of Police in the Metropolitan Police District, the Commissioner of City Police, within the city, and Justices in petty sessions elsewhere, may grant an ‘occasional licence’ permitting any house licenced for consumption *on* the premises, to be kept open during certain hours, and on any special occasion mentioned in the licence, without regard to the regular time of closing ('72, sec. 29, and '74, sec. 5); and, with the consent of any Justice, usually acting for the petty sessional division within which the place of sale is situate, a licence may be granted by the Excise to any person authorised to keep an inn, beer-house, &c., to sell liquor between sunrise and 10 p.m., at such place and during such time, not exceeding three consecutive days, as the Commissioners of Excise shall approve (26-7 Vict. c. 33, sec. 20, and '74, sec. 19). This form of occasional licence is frequently taken out for cricket-matches, races, &c. The publican, it must be understood, carries with him into the field many of the liabilities in respect of conduct to which he was subject at home; and the place in which he sells is, as regards the offences Nos. 9, 10, 12, 13 and 22 (see page 278), to be deemed licenced premises ('74, sec. 20).

The Register.—In every licensing district a Register is kept, containing particulars of all licences granted within its area, both as regards the premises, their owners, and the holders for the time being of such licences. Upon this Register are also recorded all forfeitures of licences, disqualifications of premises, records of convictions, and other matters relating to the above ('72, sec. 36). Every owner of licenced premises is entitled to inspect this Register, and as the owner's name is only placed thereon upon the information of the publican, he should ascertain that his own has been correctly entered. Otherwise he may fail to receive ‘notices’ of considerable importance. Thus where any tenant of licenced premises is convicted of any offence, a repetition of which would render the premises liable to be disqualified, notice is

to be given to the owner. And where any order disqualifying such premises has actually been made, such order is to be served upon him (unless he be also the occupier), with notice that he may appeal against such order at a petty sessions to be held upon a day specified ; and certain provisions are made for the protection of his interest ('72, sec. 56, and '74, sec. 15). Any person possessing an interest paramount to that of the occupier is entitled to be placed upon the Register as an owner, or one of the owners, for the above purpose ('74 sec. 29).

Indorsing Licence.—Where any licenced person is convicted of any offence, which conviction the Court may order to be indorsed upon his licence (*See* 'Offences' marked * below), the Register or an extract therefrom is to be produced to the Court before passing sentence, and the Court, after inspecting the entries therein relating to the offender, is to declare whether it will or not cause such conviction to be so indorsed ; and a declaration that such shall be done is to form part of the sentence, and therefore becomes matter of appeal ('74, sec. 13). This indorsement, with a corresponding record in the Register, will then be made ; and where the conviction has the effect of forfeiting the licence, or disqualifying the offender or the premises, the licence will be retained by the clerk of the court and notice sent to the Excise officer of licences for the district (*See* '72, sec. 55).

Repeated Convictions.—When any licenced person, upon whose licence two convictions, obtained during the preceding five years, are already recorded, is convicted of any offence which the Court is authorised to direct to be so recorded : (1) his licence is forfeited, and he is disqualified for five years from holding another ; (2) the premises, unless the Court, in its discretion, otherwise order, are disqualified for receiving a licence for two years ('72, sec. 30, 32, and '74, sec. 13). The above does not interfere with the infliction of any punishment to which he would otherwise be liable.

See also 72, sec. 31, as to the disqualification of premises after repeated convictions in certain cases.

RULES AND REGULATIONS.

In the preceding division of our subject we have shown the manner in which licences are granted, renewed, transferred, and sometimes taken away. And, if all the world were sober and orderly, the Register would contain little more than a record of the three former of these proceedings, and we might dismiss the remainder of our story in the course of a few lines. It has been found necessary, however, to lay down very stringent rules for the conduct of licenced houses and of the liquor-traffic in general, which will form the next point for consideration.

Name on Premises.—Every licenced person is bound to keep his name conspicuously painted up, with the addition of the word ‘licenced,’ and of words sufficient to express the business for which he is licenced, and whether for ‘on’ or ‘off’ purposes (’72, sec. 11; ’74, sec. 28). If he hold a six-day or an early-closing licence, the fact must be stated (’72, sec. 49; ’74, sec. 7).

Sale of Liquor.—No unlicenced person may retail intoxicating liquor under any circumstances, and any evasion of the law in this respect, as by means of fictitious clubs, &c., will expose the offender to the punishment mentioned in connection with Offence No. 1, *infra*. But no licence is necessary in the case of a *bonâ fide* club, supplying liquor, upon payment, to its members; *Graff v. Evans*, 51 L. J. M. C. 25.

No licenced person may sell except upon his licenced premises. A publican may send out sold liquor in the usual manner, but he must be careful not to send it to such a distance, or under such circumstances, as to make the transaction substantially a sale away from his premises. A spirit-dealer licenced for premises in Worcester had an agent at Cheltenham who took orders there, upon unlicenced premises, and transmitted them to Worcester for execution. The

dealer was held by the Queen's Bench to have been properly convicted for selling spirits at Cheltenham, *Stallard v. Marks*, 42 J. P. 359 ; 47 L. J. M. C. 91.

Sales under Off-licence.—The holder of a licence for consumption off the premises must not evade the Act by carrying or sending out liquor for the purpose of being sold upon his account and consumed in any tent, shed, or building belonging to or used by him, *or in any other place whatsoever*. And if any purchaser of liquor upon 'off' premises drinks such liquor *on the premises where the same is sold* (including any premises adjoining or near thereto, if belonging to the seller, or under his control, or used by his permission), *or on any highway adjoining or near to such premises*, the seller, if it appear that such drinking was with his privity and consent, is liable to the penalties named under Offence 2 ('72, sec. 5). The drinking, it will be observed, must be with the actual 'privity and consent' of the publican, which implies something more than mere 'knowledge,' a word which does not occur in the section. See per Lindley, J., in *Bath v. White*, Jan. 25, 1878, 3 C. P. D. 175 ; 42 J. P. 375.

Gaming upon Licenced Premises, and, *a fortiori*, any infringement of the Betting-house Act (*see* page 218) is strictly forbidden. As regards the landlord's liability, *see Somerset v. Hart*, Mar. 1884, 53 L. J. M. C. 77. Playing at dominoes or cards for money, or at skittles for beer, is gaming ; and a publican may not even allow his private friends to play cards for money in his private room, a prohibition which Cockburn, C.J., considered rather hard : See *Patten v. Rhymer*, 29 L. J. M. C. 189. A licenced victualler may keep a billiard table without a licence (*see* BILLIARDS), and let it out for play ; but he must not knowingly allow any money or betting upon the game, *Foot v. Baker*, 6 Scott, N. R. 301 ; and although he may supply lodgers with liquor after closing hours, the billiard-room must be punctually locked up, *Ovenden v. Raymond*, 34 L. T. 698.

Disorderly Persons.—Any licenced person may refuse admission to, and turn out of his premises, any person who is drunk and disorderly, or whose presence would subject him to a penalty ('72, sec. 18). See page 165.

Hours for Opening and Closing (by Greenwich time).—
'All premises in which intoxicating liquors are sold by retail shall be closed as follows,' viz. :—

If situate within the Metropolitan District (for area, see title), on

(a) Saturday, from midnight till 1 p.m. on Sunday.

(b) Sunday, from 11 p.m. till 5 a.m. on Monday.

(c) Other days, from 0.30 a.m. till 5 a.m.

If situate beyond the Metropolitan District, and within the Metropolitan Police District (for area, see title), or in a town or 'populous place' (*i.e.*, any collection of houses containing at least 1000 inhabitants, declared to be such by the County Licencing Committee), on

(a) Saturday, from 11 p.m. till 12.30 p.m. on Sunday.

(b) Sunday, from 10 p.m. till 6 a.m. on Monday.

(c) Other days, from 11 p.m. till 6 a.m. of the following day.

If situate elsewhere, on

(a) Saturday, from 10 p.m. till 12.30 p.m. on Sunday.

(b) Sunday, from 10 p.m. till 6 a.m. on Monday.

(c) Other days, from 10 p.m. till 6 a.m. of the following day.

Every establishment of the kind must be closed from 2.30 or 3 till 6 on Sunday afternoon, according as it is permitted to open at 12.30 or 1 o'clock on that day. Christmas Day and Good Friday are to be considered as Sundays ('74, sec. 3). Power is given to licencing Justices, beyond the Metropolitan District, to assimilate the hours of closing and opening on Sunday afternoon to those in force therein ('74, sec. 6).

'Any person who, during the time at which premises . . . are directed to be closed . . . sells, or exposes for sale, in such premises, any intoxicating liquor, or

opens or keeps open such premises for the sale of intoxicating liquors, or allows any intoxicating liquors, although purchased before the hours of closing, to be consumed on such premises,' is liable to a penalty ('74, sec. 9), and any person found on such premises when they are required to be closed, unless he satisfies the Court that he was an inmate, servant, or lodger, or a *bonâ fide* traveller, or that otherwise his presence on such premises was not in contravention of the Act, is likewise punishable ('72, sec. 25).

It will be noticed that the Act does not in terms impose a penalty, unless the premises are open for the sale of liquor. But, as the presumption is against the licensee, he cannot possibly be too careful in the matter; and this remark applies to grocers, &c., licenced to sell liquor, who should scrupulously close off that branch of the establishment, if they otherwise continue open after prohibited hours. (See *Tassell v. Ovenden*, May 9, 1877, 2 Q. B. D. 383; 41 J. P. 309.) A publican would be insane who tried the experiment of selling lemonade between 3 and 6 on Sunday afternoon.

Travellers and Lodgers.—Nothing is to preclude a person licenced to sell liquor to be consumed on the premises from selling at any hour to *bonâ fide* travellers or to persons lodging in his house. Nor does the Act forbid the sale of such liquor at any time at a railway station to persons arriving or departing by train ('74, sec. 10). A traveller, *i.e.*, a person travelling either for business or pleasure, is not to be considered as within the above exemption, unless he lodged during the preceding night three miles at least (by the nearest public thoroughfare) from the place where he demands to be supplied with liquor. It lies upon the publican to show that the person supplied was either a *bonâ fide* traveller or truly believed by him to be such, after he had taken all reasonable precautions to ascertain the fact ('74, sec. 10). If he was imposed upon in the matter, the *soi disant* traveller is punishable, as we shall presently see.

It is obvious, therefore, that we must not punish the

publican merely because, upon measuring the road afterwards, we find that the person whom he supplied was really within three miles of his last lodging. The landlord is not responsible if, at the time, he 'truly believed,' upon the evidence fairly within his reach, that the man was a traveller within the meaning of the Act, and entitled to drink accordingly. He has generally no means of sifting any statement which his guest may make, which would not render the exception a dead letter altogether. Consequently, the statute does not use the words 'reasonably believed,' or concern itself with the wisdom of his conclusion, provided only that he did not allow himself to be imposed upon by representations which he had no business to accept as true. Finally, our host, be it observed, cannot escape liability by declining to supply the traveller, who, at least in the case of an 'inn' proper, has a right to demand refreshment then and there: *R. v. Rymer*, Jan. 1877, 2 Q. B. D. 136. And so long as a difficult question of mixed law and fact may be forced upon him for decision at any moment, he has a right to more indulgence than he frequently receives in the event of an occasional mistake.

Private Friends of Publican.—These may be supplied by him with liquor at any hour in the way of *bonâ fide* entertainment, at his own expense ('74, sec. 30), see *Cobbett v. Haigh*, C. P., Nov. 27, 1879, and he may *give away* liquor at any time, *Petherick v. Sargent*, 6 L. T. N. S. 48.

Exemption from Closing.—The local authority (*i.e.*, two Justices in Petty Sessions, except in the Metropolitan Police District and City), in order to provide for the accommodation of any considerable number of people attending any market, or following any lawful calling, may exempt any licenced victualler or beer-house keeper (*on*) from the above regulations as to closing, upon such days and during such hours, except between 1 and 2 a.m., as they may think fit ('72, sec. 26; '74, sec. 4).

Refreshment Houses.—Any one may keep a restaurant,

or place of public refreshment, and purvey food and drink, so long as the latter is not of intoxicating quality, and so long as he does not suffer his premises to become the resort of thieves or prostitutes, see page 349 (7). But a house or room of this description opened before 5 in the morning, or kept open after 10 at night, becomes technically speaking a 'refreshment house,' and as such requires a licence from the Excise: see 23-4 Vict. c. 27, sec. 6, and *Kelleway v. Macdougall*, Q. B. Dec. 1, 1880; 45 J. P. 207. Such licence, when it is not intended to *sell* intoxicating liquor, does not require the Justices' authority. But no such liquor must be *consumed* upon these premises during prohibited hours ('72, sec. 27); and they must close for the night at the same time as ordinary licenced houses ('74, sec. 11). A refreshment house holding a foreign wine licence under the 24-5 Vict. c. 91, sec. 9, conditional upon closing at 10 p.m., must neither sell nor permit consumption upon the premises after that hour ('72, sec. 28).

Closing in Case of Riot.—Any two Justices may order and compel every licenced person in any place within their jurisdiction where a riot happens or is expected to happen to close his premises during such time as they may direct ('72, sec. 23).

LEGAL PROCEEDINGS, ETC.

Disqualification of Justices.—'No Justice may act for any purpose under any of the liquor licencing Acts [except as regards certain offences, for which see DRUNKENNESS] who is, or is in partnership with, or holds any share in any company which is, a common brewer, distiller, maker of malt for sale, or of any intoxicating liquor, in the licencing district, or in the district or districts adjoining to that, in which such Justice usually acts' . . . or 'in respect of any premises in the profits of which such Justice is interested, or of which he is wholly or partly the owner,' &c., under a penalty of £100 ('72, sec. 60).

No Justice who is, or is in partnership, &c., should under any circumstances act in the matter of temporary transfers or protection orders; since, owing to a legislative omission, he may, under the 5 & 6 Vict. c. 44, sec. 4, become liable to certain penalties provided by reference to a now repealed enactment, the 9 Geo. IV. c. 61, sec. 6.

Entry upon Premises—Search Warrant.—Any constable may, for the purpose of preventing or detecting any violation of the law, at all times enter any licenced premises ('74, sec. 16). And any Justice, if satisfied by information upon oath that liquor is illegally kept or sold at any place within his jurisdiction, may issue his search warrant, authorising any constable to search for and seize the same. Such constable may also demand the name, &c., and, if necessary, arrest any person found on such premises at the time of seizure, who will *prima facie* be deemed to have been there for an unlawful purpose ('74, sec. 17).

Evidence on Legal Proceedings.—In all summary proceedings the defendant and his wife are competent to give evidence ('72, sec. 51); and in proving a sale of liquor it is not necessary to show that money actually passed, or that liquor was actually drunk, provided the Court be satisfied that a sale substantially took place, or that any consumption of liquor was about to take place, proof of which consumption or intended consumption is evidence of a sale by or on behalf of the occupier ('72, sec. 62).

Punishment and Penalties.—Every offence may be punished and every forfeiture enforced, by distress unless otherwise indicated, before two or more Justices or a stipendiary magistrate. When distress is ordered in default of payment of any penal sum, the offender in default of payment may (now) be imprisoned according to the scale provided by the Summary Jurisdiction Act, 1879, see page 428.

All forfeitures are to be sold or disposed of as the Court may direct—proceeds to go as penalties, after paying expenses

of seizure, &c. Penalties will go to the county or borough fund, unless sued for by any officer of the Inland Revenue, in which case they are to be treated as Excise penalties. Any part not exceeding a moiety of any non-Excise penalty ('72, sec. 72 (10)) may be ordered to be paid to the superannuation fund of the police establishment within whose jurisdiction the offence occurred ('72, sec. 66). Appeal to Quarter Sessions (see page 73).

When a licence becomes forfeited upon conviction, from which conviction an appeal is duly made, a temporary licence may be granted pending the appeal ('72, sec. 53).

No conviction is to be quashed for want of form, or removed by *certiorari* into any superior court ('72, sec. 54).

Saving Clauses.—Nothing in the above is to affect the sale of black or spruce beer (25 Vict. c. 22, sec. 9), nor the sale of liquor in theatres (5 & 6 Will. IV. c. 39, sec. 7, and see THEATRES), packet boats (5 & 6 Vict. c. 44, sec. 5), or canteens. Nor do the Acts apply to or affect the sale of medicated or methylated spirit, or spirits made up in medicine, or the sale of intoxicating liquor by wholesale, or any penalties recoverable by the authorities of the Excise ('72, sec. 72). See SPIRITS ACT, 1880, page 423.

OFFENCES.

[See, if necessary, note on *Summary Jurisdiction*.]

The following are the principal offences which can be committed by licenced persons, including all (marked *) which may involve indorsement of the licence. See page 268.

1. ('72, sec. 3).—‘Any person who shall sell or expose for sale by retail any intoxicating liquor which he is not licenced to sell by retail . . . or at any place where he is not authorised by his licence to sell the same’ [£50, or one

month peremptory, with hard labour ; and court *may* declare all liquor found in his possession and the vessels containing it to be forfeited]. Heavier punishment for second and subsequent offences, including on the second the absolute forfeiture of any licence held.

2.* (*Ib.*, sec. 5).—Person not licenced to sell liquor to be drunk on the premises allowing, ‘with his privity or consent,’ any purchaser to drink such liquor on the premises where the same is sold, or on any premises adjoining or near the premises where the liquor is sold, if belonging to the seller, or under his control, or used by his permission, or on any highway adjoining or near such premises [£10], second offence [£20]. See page 270.

3.* ('72, sec. 6).—Person not licenced to sell liquor to be drunk on the premises evading the Act by carrying or suffering the same to be carried out to be sold on his account or for his benefit and consumed elsewhere [same].

4. ('72, sec. 7).—Selling spirits to children apparently under 16, to be consumed on the premises [20s.], subsequent offence [40s.].

5. ('72, sec. 8).—Selling (unless in cask or bottle, or in quantities less than half a pint) except in measures marked according to the imperial standards (a) [£10 and forfeit ‘the illegal measure’], subsequent offence [£20].

6. ('72, sec. 9).—Making or using internal communication

(a) This can only mean that when *measure* (say a pint) is demanded the landlord must not pretend to measure it in anything but a legally stamped measure. The purchaser is entitled to have the exact quantity ascertained in that manner ; and no other ‘measures’ may be employed in the business. But if a ‘glass’ be asked for, which *prima facie* does not imply the demand of any exact amount of imperial measure, the publican may pour out a tumblerful and offer it as a visible quantity, at his own price. See 41-2 Vict. c. 49, sec. 22 (page 456).

between licenced premises and unlicenced premises used for public resort [£10 each day, and forfeit licence].

7. ('72, sec. 10).—Licenced person having on his premises any description of liquor which he is not authorised to sell, unless satisfactorily accounted for [£10, and forfeit liquor and vessels], subsequent offence [£20].

8. ('72, sec. 11).—Not affixing name, &c., to premises [£10]. See page 269.

9.* ('72, sec. 13). Permitting drunkenness or riotous conduct, or selling liquor to any intoxicated person [£10], subsequent offence [£20]. See DRUNKENNESS, page 164.

10.* ('72, sec. 14).—Knowingly permitting premises to be the *habitual resort* of reputed prostitutes, and allowing them to remain longer than necessary for reasonable refreshment [same].

11. ('72, sec. 15).—Permitting premises to be used as a brothel [£20, *licence to be forfeited*, and the defendant disqualified for ever from holding another]; see *R. v. JJ. of Holland*, Q. B. May 10, 1882, 46 J. P. 312.

12.* ('72, sec. 16).—Knowingly harbouring constable on duty, supplying him with liquor or refreshment, or bribing or attempting to bribe him [£10], subsequent offence [£20].

13.* ('72, sec. 17).—Permitting gaming, &c., see page 270 [same].

14.* ('72, sec. 27).—Keeper of refreshment house, not licenced for the sale of intoxicating liquor, violating conditions [same]. Indorsement for the breach of section 28. See page 273.

15.* ('74, sec. 16).—Refusing to admit constable, see page 275 [£5].

16. (34-5 Vict. c. 112, sec. 10).—Harbouring thieves

or reputed thieves, or permitting them to meet in house, or allowing the deposit of stolen goods [£10, with imprisonment in default, and, if required, sureties in £20 to keep the peace. Licence *may* be forfeited]. Second offence [licence forfeited and defendant disqualified for two years].

17.* ('74, sec 14).—Where any licenced person is convicted of any offence against any Act relating to the adulteration of drink, such conviction shall be entered on the Register, and may be indorsed upon his licence as if it had been a conviction under the Licencing Acts.

18.* ('74, sec. 9).—Contravention of sec. 9 as to selling or permitting the consumption of liquor during prohibited hours [£10]. Second offence [£20]. See page 271.

OFFENCES BY OTHER THAN LICENCED PERSONS.

19. ('72, sec. 4).—The occupier of any unlicensed premises on which any intoxicating liquor is sold, or if such premises are occupied by more than one person, every occupier thereof, if it be proved that he or they were privy or consenting to the sale, is or are liable to the penalties imposed by section 3. See Offence 1.

20. ('72, sec. 25).—Person not an inmate, lodger, or traveller, found, *in contravention of the Act*, upon licensed premises when required to be closed [40s]. See page 272.

21. (*Ib.*).—Any person found upon such premises when required to be closed, not giving his name, &c., to a constable on demand [£5].

22. (*Ib.*).—Person, by falsely representing himself as a traveller, buying or attempting to buy liquor during prohibited hours [£5].

23.—Drunkenness generally. See DRUNKENNESS, page 164.

JURORS. Within the last seven days of September, Justices in every Division hold a Special Sessions for revising and allowing the lists of persons liable to serve on juries within the same (6 Geo. IV. c. 50). The churchwardens and overseers attend and produce their lists, and are bound to answer questions upon oath. No disqualification or exemption can be pleaded by a juror, if not claimed previously to the above revision; and the decision of the Justices as to the qualification of persons marked 'special jurors' in the lists as revised by them is final. (Juries Act, 1870, 33-4 Vict. c. 77, s. 14.)

The following persons are qualified to serve on juries generally:—Every natural-born subject, or alien domiciled for 10 years, between 21 and 60, having in his own name, or in trust for him, in any county in which he resides £10 a-year for life or lives, or greater estate, in freeholds, copyholds, or the rent thereof—or £20 a-year in land held for 21 years, or for a life or lives—or who, being a householder, is rated to the poor on a value of £30 in Middlesex, or £20 elsewhere—or who occupies a house with 15 or more windows.

Special Jurors.—The following persons are qualified to act as special jurors (Juries Act, 1870, s. 6):—Every man in the juror's book who shall be legally an Esquire, or a banker or merchant—or shall occupy a private dwelling-house rated to the poor, *or* inhabited house duty, on a value not less than £100 in a town of 20,000 inhabitants, or £50 elsewhere—or who shall occupy premises, other than a farm, rated on not less than £100, or a farm rated on not less than £300.

Exemptions.—The following (sec. 9) are exempt from serving upon any juries or inquests whatever. Occupations printed in *italics* denote that the person claiming exemption must be in actual practice:—Peers, members of parliament, judges, clergymen, Roman Catholic priests, ministers of Protestant Dissenters and of Jews, whose place of meeting is duly registered (provided they follow no secular occupation

except that of schoolmaster); *serjeants* and *barristers-at-law*, *certificated conveyancers* and *special pleaders*; *Doctors of Law* and *advocates of the Civil Law*; *attorneys*, *solicitors* and *proctors*, and *their managing clerks*; *notaries public*; *officers of the Courts of Law and Equity*, and of the *Admiralty and Ecclesiastical Courts*, including the *Courts of Probate and Divorce*; *clerks of the peace* or *their deputies*; coroners, gaolers, keepers of houses of correction, and their subordinate officers; keepers in public lunatic asylums; *members and licentiates of the R. C. P. in London*; *members of the R. C. S. in London, Edinburgh, and Dublin*; *certificated apothecaries*, *registered medical practitioners*, and *registered pharmaceutical chemists*; officers of the army, navy, militia and yeomanry, *while on full pay*; licenced pilots; household servants of Her Majesty; officers of the Post Office, Commissioners of Customs and of Inland Revenue, and their respective officers; sheriffs' officers; officers of the rural and metropolitan police; magistrates of the metropolitan police courts and their officers; members of the council of any borough, and every justice assigned to keep the peace therein, and the town clerk and treasurer, so far as relates to any jury summoned to serve in any county where such borough is situate; burgesses of every borough in which a separate court of quarter sessions is held, so far as relates to any jury summoned to serve in any court of general or quarter sessions in the county in which such borough is situate; every Justice of the peace, so far as relates to any jury summoned to serve at any sessions of the peace for the jurisdiction for which he is a justice; and officers of the Houses of Lords and Commons.

As regards the liability of 'special jurors' to serve on the common jury panel, we will conclude with an extract from a letter addressed by Lord Coleridge, C.J., to the High Bailiff of Leicester, under date Dec. 20, 1878:—'I beg leave to call your attention to the law as to the formation of the ordinary or common jury panel. Every one liable to be a

juror at all is liable to serve on common juries; and special jurors are not, by law, and ought not to be in practice, excluded from the common jury panel. This rule, however, is habitually violated by the under-sheriffs in many counties, who, in defiance of the law and of the remonstrances of Judges, persist in excluding special jurors from the common jury panel, both in the criminal and civil court.'

JUSTICES. As regards the position and duties of Justices generally, see pages 1—6. County Justices are placed upon the Commission of the Peace by the Crown, through the Lord Chancellor, usually at the instance of the Lord Lieutenant. No solicitor practising within the county is eligible. A sheriff cannot act, during the continuance of his shrievalty, in the county of which he is sheriff. No person can be appointed or act during bankruptcy (Bankruptcy Act, 1883, sec. 32). It is not usual to appoint a clergyman, unless in cases where it is difficult to find a qualified lay candidate.

The property qualification for a county Justice is an estate of freehold, copyhold, or long leasehold, in England or Wales, of the clear yearly value of £100, or a reversion, expectant upon leases for lives, of £300.

Under the 38-9 Vict. c. 54, however, any person who has during the two preceding years occupied a dwelling-house assessed to the inhabited house duty at a value of not less than £100, and has been rated to all rates and taxes, within any county in England or Wales, is qualified for such county. But his right to act as a Justice determines after he has ceased for 12 months to hold such qualification. In the first case, residence within the county is immaterial; in the second, it is one of the conditions of office.

Three oaths are imposed upon the Justice before his appointment is complete: the oath of qualification—the oath of allegiance—and the judicial oath.

In boroughs, within the Municipal Corporation Act, Justices are equally appointed through the Lord Chancellor.

No special qualification, beyond that of residence, either in or within seven miles of the borough, is required. The Mayor of every borough is a Justice during his term of office, and throughout the ensuing year.

Under the 'Municipal Corporation Act, 1882' (sec. 158), borough Justices have no authority to act at General or Quarter Sessions for the county, or in making or levying any county rate. County Justices, on the other hand, by virtue of their general jurisdiction throughout their county at large, have *primâ facie* concurrent jurisdiction within any borough which forms part of it. But this presumption is repelled where the borough charter contains a *non intromitter* clause, and the borough has its separate Court of Quarter Sessions.

In cases where a Justice for any county, borough, &c., happens also to be Justice for some other county, &c., adjoining to or surrounded by the first, he may act for the one, both as regards indictable offences and matters of summary jurisdiction, while actually in the other. And any county Justice may exercise his full authority in any place of exclusive jurisdiction adjoining to or surrounded by such county, but without power to intermeddle in any matter arising in the place itself. All acts of any county Justice are as good in relation to any detached portion of some other county surrounded by his own, as if such detached portion were part of his own county (11 & 12 Vict. c. 42, ss. 5—7; c. 43, s. 6).

County Justices are *ex officio* guardians of the Poor within the Union in which they reside. They are also trustees or commissioners of turnpike roads passing through their county, and members of the Board in Highway Districts.

Justices have the power of acting upon their own 'view' in the case of certain offences committed in their presence, (see pages 80, 433, 437, 448, &c.); but a Justice is not a police constable, and, when off the bench, will probably content himself with that degree of general authority to which his position entitles him in his own neighbourhood.

A criminal information may be filed against a Justice upon affidavits alleging misconduct arising out of private interest, resentment, or some other inexcusable motive. But no such course can be adopted when the act complained of was done inadvertently, or under an error in judgment.

'No Justice of the Peace ought to suffer for ignorance where the heart is right,' said Lord Mansfield. 'To punish as a criminal any person who, in the gratuitous exercise of a public trust, may have fallen into error or mistake, belongs only to the despotic rule of an enslaved people,' added Chief Justice Abbott.

A caution, suggested by the words just written, shall be given upon weightier authority than our own. The following is from Mr. Serjeant Cox's 'Principles of Punishment,' a book which no Justice can read without interest, or digest without advantage. 'The question for the Justice is, in all cases, not whether in his own mind he believes the defendant to be guilty, but whether he has been *proved*, by *proper and sufficient evidence*, to be guilty. The defendant is to be tried precisely as by a jury, and as a jury would be sworn to try him; and this cannot be more tersely put than in the language of the juryman's oath: "You shall well and truly try, and true deliverance make . . . and a true verdict give *according to the evidence*." The Justice, in exercising his extensive summary jurisdiction, should never forget that he is juryman as well as Judge, and should feel and act as if he had taken the juryman's oath. The language of the law, moreover, must never be strained so as to *make* an offence, nor with a view to bring the defendant within its grasp, in order to punish him for doing what the Justice deems to be wrong in itself, or something which *he* deems it desirable to suppress. Instances of this are not unknown, even among the occupants of the higher magisterial offices. But it is a practice so fraught with danger that the Justice cannot too sedulously guard himself against it, remembering that his

business is to administer *the law* as it is, and not to dispense *justice*, as, in his own mind, he believes it ought to be.'

Justices, we may venture to add, should act upon the true faith that the presumption of innocence is with the accused (see page 176); and that, as judges, they are to control, and not to extend, the damnatory operation of penal statutes.

Judicis officium est ut res ita tempora rerum quærere. 'Let not Justices be so ignorant of their own right as to think that there is not left to them, as a principal part of their office, a wise use and application of laws; for they may remember what the apostle says of a greater law than theirs: Scimus quia lex bona est modo quis eâ utatur legitime.' (Bacon, *Essay of Judicature*.) See also PUNISHMENT.

Actions against Justices.—A civil action for damages may lie against a Justice for an act purporting to be done by him in the exercise of his office. Generally speaking, however, such an action is only maintainable when the Justice had either no jurisdiction in the matter complained about, or plainly exceeded his jurisdiction. In no case where a discretionary power is given to Justices by statute, can an action be brought in respect of the *bonâ fide* exercise of such discretion.

Special protection is afforded to Justices as regards actions of the above description by 11 & 12 Vict. c. 44. But a Justice is not entitled to the protection of this Act in respect of an order which he had not only no authority to make, but no valid reason for supposing that he had any authority to make, *Agnew v. Jobson*, C. P., June 26, 1877, 47 L. J. M. C. 67; 42 J. P. 424.

Justice declining to act—see APPEAL, page 76.

Justice interested—see PRACTICE (11).

LANDLORD AND TENANT. Under the 1 & 2 Vict. c. 74, where the tenancy of any premises held at will, or for not over seven years, either rent-free or at a rent not exceeding £20, shall have ended, by notice to quit or otherwise,

and the tenant, or any person in occupation, shall refuse to quit, the landlord, or his agent, may serve such tenant or person with seven days' notice (in prescribed form) of his intention to apply to the Justices to recover possession. Such notice, if personal service be impracticable, may be posted on the premises. Should the tenant fail to appear and show cause to the contrary, two Justices, on proof of holding and determination of tenancy (and of landlord's title, if accrued since the date of letting), may issue their warrant for giving possession, by force if necessary, within a day therein named, such day to be not less than 21 nor more than 30 days from the date of the warrant. There is no power to award costs. The statute applies only to cases strictly between landlord and tenant, *i.e.*, not to the occupier under the trusts of a charity. As to parish house or lands, see 59 Geo. III. c. 12, s. 24.

Deserted Premises.—Where premises held at rack-rent, or at not less than three-fourths of their yearly value, are deserted and left uncultivated or unoccupied, so that no sufficient distress can be had for rent due, two Justices may, at the request of the landlord, proceed to view the same, and affix a notice stating upon what day (after not less than a clear fortnight's interval) they will return for a second view. And if, upon such second view, the tenant does not appear and pay his rent, or there be no sufficient distress available, they may put the landlord into possession, and the tenant's lease will thenceforth be void. See 11 Geo. II. c. 19, sec. 16, and 57 Geo. III. c. 52.

See also TENANT REMOVING GOODS.

LARCENY (*latrocinium*), or stealing in general, was, in former times, distinguished into two classes, *viz.*, 'simple larceny,' or plain theft, and 'compound larceny,' which implied the aggravation of taking from the house or person.

Simple larceny was further sub-divided into 'grand larceny,' where the goods stolen were over one shilling in value,

and 'petty larceny,' where the value was under that sum. The difference, however, between these two shades of offence lay substantially in the punishment, the former being, nominally at least, a capital felony; the latter exposing the offender to imprisonment and whipping, and in later times to transportation.

Compound larceny was again chiefly distinguished from the lesser offence by the higher penalties which it entailed. In matters of simple larceny the benefit of clergy could usually be claimed, and, consequently, the extreme infliction evaded; but this indulgence was, in compound cases, rigorously denied. A theft to the value of twelpence from the pocket or from a shop, or of forty shillings from a dwelling-house, without the slightest approach to violence in any case, placed the offender beyond hope of mercy. The distinction between grand and petty larceny was, however, abolished in 1827; and by the 24-5 Vict. c. 96, every larceny, whatever the value of the property stolen, is to be deemed to be of the same nature as grand larceny previously to the above year.

As regards larcenies to which a 'compound' character was formerly attributed, the offence of stealing in a dwelling-house does not appear to constitute, or ever to have constituted, *per se*, a distinguishable form of simple larceny. It is only when some circumstances of aggravation are superadded that it becomes a more serious business, punishable with proportionate severity. This is the case when the value of the property stolen exceeds £5; or when threats are used at the time of stealing, producing bodily fear; or when the house is 'broken into' by day or night. Larceny from the person is a distinct form of offence, subjecting the offender to special punishment.

Larceny may be defined as the felonious taking and carrying away of the personal goods of another.

First, the taking must be felonious—*animo furandi*—i.e., with the then existing intention of despoiling the owner per-

manently, and against his will. This criminal motive must prompt the deed. The act must be larceny at the outset if it is to be larceny at all. Thus, if I take another man's umbrella by mistake, and it subsequently occurs to me to keep it as my own, this subsequent resolution, not being coupled with any corresponding action, is a mere movement of the mind, which cannot convert what was originally an innocent taking into a felony. It is true that, if called upon to account for my possession of the property, I might find some difficulty in inducing a jury or a bench of Justices to believe that, *when I took it*, I did not intend to steal it. As to that, they will draw their own conclusions. All that is now insisted upon is that, if I succeed in so doing, I cannot be convicted of theft, and that the owner must proceed against me, not as a criminal, but as the defendant in a civil action. See FINDING PROPERTY.

Of course, the above definition excludes the case of a mere 'making free' with the article taken, when there was no intention of stealing it outright. Generally speaking, the indication of a criminal design, in any case, is a clandestine way of going to work, or subsequent equivocation or falsehood when questioned about the transaction.

Again, the taking must be against the owner's will ; not necessarily at the moment, since, in ninety-nine cases out of a hundred, he knows nothing about it. Or he may have been induced, by some trick, threat, or fraud, intentionally to allow the article to pass out of his own possession. In the never-failing 'confidence trick,' during which the unsuspecting countryman entrusts his newly found London friend with all his cash, 'to carry out of sight for five minutes,' as the usual mode of evincing reliance among gentlemen, the latter is just as much guilty of larceny as if he had snatched the purse away. The owner, when he handed it over, never intended to part with his *property* in it, and this the thief knew ; and, when he took it, intended to steal it. A knife-grinder, in a recent case, demanded the exorbitant fee of

5s. 6d. from a woman for sharpening six knives, and obtained payment by dint of strong language. This was held larceny by five judges, *R. v. Lovell*, Mar. 5, 1881, 8 Q. B. D. 185.

We must not, however, confound a transaction of this kind with what is technically known as obtaining property by FALSE PRETENCES, an offence of distinct and peculiar character, which has been already noticed in its proper place.

Secondly, according to our definition, there must not only be a felonious taking but a carrying away. A bare removal of the object from its place is, however, sufficient. A thief who came to steal silver, and, having extracted it from the plate chest and laid it upon the floor, was disturbed before he could get away with it, was held to have committed larceny. But the offence is not complete unless the subject-matter be, momentarily at least, in the entire and absolute possession of the person charged, as was determined in the well-known case of the parcel fastened by a long string to the counter, for detective purposes, by the too ingenious shopman.

Thirdly, to complete the offence of larceny, this taking and carrying away must be, as we have said, of the 'personal' goods of another. Thus plants and trees, and even lead upon house-tops, were held part of the owner's real estate, and their removal, although cognisable as a civil injury, was not regarded at Common Law as matter of theft. An apple upon the bough, for example, was looked upon as part and parcel of the soil itself. To gather it was, no doubt, to convert it at once into personal property. But the subtilty of the law perceived that it was not taken *as such* from the owner, since it was only turned into a moveable by the act of the trespasser himself, who was the only person who ever had hold of it in its newly acquired state. Its abstraction, therefore, was nothing after all beyond a violation of territorial rights. It furnished the landowner, no doubt, with a ground of civil action, but was not cognisable as a criminal offence. So soon, however, as that apple fell to the grass in

obedience to the call of gravitation, it severed itself spontaneously from the freehold and became the personal property of the owner of the soil. To pick it up and pocket it then, was to run the risk of being convicted as a felon. This explains the state of affairs at the present hour. Articles attached to the freehold, whether metal, fences, trees, or growing fruit, are all protected by modern legislation ; but to steal them is not larceny, although a statutory offence, either *punishable as larceny* in some special instances (see page 296), or, otherwise, with some lesser degree of severity. Again, it was no larceny at Common Law nor a criminal offence of any kind, to take animals *feræ naturæ* and unreclaimed, such as deer in a forest, or fish in a river, nor even domesticated creatures kept for whim or pleasure, but which were not intended to serve as food, such as tame birds, dogs, and cats, in which a man was allowed to enjoy a sort of loose ownership, but upon which the law set no intrinsic or appreciable value. We have, in more recent times, recognised the fact that one's property in things of this kind is by no means matter of indifference and have made its infringement matter of criminal punishment. But to steal a dog or a parrot is no more larceny or punishable as such than it was when Blackstone wrote. For convenience sake, however, we place under the head of Larceny all these cognate offences, and include them in a category which embraces stealing of every description.

A servant or clerk who sells or gives away property of his master which is in his charge is guilty of larceny. But if he intercept money or money's worth which ought to have become the property of his master, before it passes into his master's possession whether actual or constructive, the offence is that of 'embezzlement.' Thus, if a shopman receive cash from a customer and at once puts it into his pocket, he is said to have embezzled it, but if he first drop it into the till and then take it out again, it is larceny. A man indicted for larceny may, however, be convicted of embezzlement, and *vice versa* (24-5 Vict. c. 96, s. 72 ; and see EMBEZZLEMENT).

One of two or more partners may be indicted for stealing or embezzling goods jointly owned, as if he had not been a part owner (31-2 Vict. c. 116).

A person to whom goods or money may have been delivered by mistake, and who knowingly takes and appropriates the property to his own use is clearly guilty of larceny, *R. v. Middleton*, 2 L. R. C. C. 38.

The 'bailee,' or temporary holder of *specific property*, whether chattel, money, or valuable security, which has been lent or entrusted to him by another, and which he is bound to return or deliver *in specie*, is guilty of larceny if he fraudulently convert it or appropriate it to his own use, or to that of any other person than the owner or the proper consignee (24-5 Vict. c. 96, s. 3). Here the conversion or appropriation is the criminal act, to which penal responsibility at once attaches. It is, of course, plain enough that if I lend a friend a five-pound note which he omits to return, I cannot afterwards charge him with stealing it. I did *not* deliver it to him as a specific chattel to be returned *in specie*. Consequently he had a perfect right to convert and employ it, and his only liability to me is matter of debt. Common-sense, however, would scarcely be so ready with a reply if asked what ought to happen, supposing I send somebody with a five-pound note to get changed, and he simply pockets the sovereigns. But the same considerations have been held to apply, and unless 'somebody' was my clerk or servant (see EMBEZZLEMENT), or had my directions in writing as to the disposal of the proceeds (see AGENTS), he may consider himself as no more than my debtor and his liability as mere matter of account. It might be otherwise if I had directed him to deliver the note to some particular person and obtain change from him, since in that case the note would have continued a specific bailment until so delivered, while the change would be equally so when obtained. At any rate, it is clear that if I direct him to purchase goods for me with my five pounds, and he does so, and then

makes away with the goods, he may be indicted for stealing them: see *R. v. De Banks*, 52 L. J. M. C. 132.

Pawning the goods of another person without authority is likewise larceny, unless there be reason to believe that the act was not intended to deprive and would not have deprived the owner permanently of the possession of his property. See PAWNING (UNLAWFUL).

As regards larceny by the appropriation of goods found, see FINDING. See also HUSBAND AND WIFE, page 250-2.

Possession of goods recently stolen is presumptive evidence against the person with whom they are found. It creates, however, no implication at law, and the presumption itself becomes weakened by lapse of time. Thus it was held, in the case of a horse stolen in September and found in the prisoner's stable in March, that the presumption against him was not sufficient to put him upon his defence. It is to be observed too that, if the prisoner give an unreasonable or improbable account of his possession, or has given different versions regarding it, the *onus probandi* rests with him, and the prosecutor need not disprove such statement. It is otherwise if his story be *primâ facie* a reasonable and probable one. As regards the possession of military arms, clothes, accoutrements, &c., see SOLDIER—*Regimental necessities*, page 418.

Within the Metropolitan Police District (see title) any constable may stop and detain any person who may be reasonably suspected of having in his possession or conveying anything stolen or unlawfully obtained (2 & 3 Vict. c. 47, s. 66). And any person charged with so having, &c., who shall not account, to the satisfaction of the Justices, how he came by the same, is liable to a penalty of £5 or to two months' (peremptory) hard labour (2 & 3 Vict. c. 71, s. 24).

SUMMARY JURISDICTION IN LARCENY.

The following statutable offences which, it will be perceived, relate mainly to animals and vegetables, are not

felonies, and may be dealt with summarily by one Justice (see, however, SUMMARY JURISDICTION, 4 and 5). Any person *found committing* any of them (see page 80) may be immediately apprehended without warrant *by any person*, and brought before a Justice (24-5 Vict. c. 96, s. 103). The information must be upon oath. Immediate imprisonment (*i.e.*, without distress) may be ordered as per scale, page 428, on non-payment of fine or compensation. In the case of a first conviction, the court may, if it shall think fit, discharge the offender upon his making due satisfaction for damages and costs (sec. 108, and see page 37). Appeal to General or Quarter Sessions (see p. 73), if imprisonment or a penalty over £5 be awarded, or if the conviction be before one Justice only.

OFFENCES UNDER 24-5 VICT. c. 96.

[*See, if necessary, note on Summary Jurisdiction.*]

1. (Sec. 12).—Hunting or killing deer in unenclosed part of any forest, &c. [£50]; subsequent offence felony. For further offences as to deer, including the destroying of any fence retaining them [£20], see secs. 13, 14, and 15.

2. (Sec. 18).—Stealing dogs, see Dogs.

3. (Sec. 21).—Stealing, or killing with intent to steal, ‘any bird, beast, or other animal ordinarily kept in a state of confinement, and not being the subject of larceny at Common Law,’ see page 290, [6 months, with or without hard labour, or forfeit value and not exceeding £20].

N.B.—This section refers to creatures such as cats, ferrets, goats, squirrels, parrots, singing-birds, &c., kept either for whim or profit. Dogs are specially protected. The stealing of other domesticated animals is simple larceny (*i.e.*, felony) and matter of indictment, with special punishment in the case of horses, cattle, and sheep; see Offences 13, 16.

4. (Sec. 22).—‘Any person in whose possession, or on whose premises, such bird or the plumage thereof, or such beast or the skin thereof, or such animal or any part thereof,

shall be found,' such person knowing that the bird, beast, or animal had been stolen [same punishment as 3].

5. (Sec. 23).—Killing or taking house-doves or pigeons under such circumstances as would not amount to larceny at Common Law [£2 over and above value].

6. (Sec. 24).—Taking or destroying fish, see FISHING.

7. (Sec. 33).—Stealing, or damaging with intent to steal, any tree, shrub, or underwood, wherever growing, to the amount of one shilling [£5 over value or damage]. See indictable offences as to trees, &c. (Offence 24).

8. (Sec. 34).—Stealing, or breaking, or throwing down with intent to steal, any part of any live or dead fence, or any post, pale, wire or rail used as a fence, or any stile or gate, or any part thereof [same punishment].

9. (Sec. 35).—Unlawful possession of any tree, shrub, or underwood, or any part of the same, or of any fence, post, &c. (as in last), being of the value of one shilling at the least [£2 over value].

10. (Sec. 36).—Stealing, or destroying or damaging with intent to steal, 'any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure-ground, nursery-ground, hothouse, greenhouse, or conservatory' [6 months, with or without hard labour, or £20 over value or damage]. Subsequent offence, felony, punishable as simple larceny (13).

11. (Sec. 37).—Stealing, or destroying or damaging with intent to steal 'any cultivated root or plant, used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or enclosed, not being a garden, orchard, pleasure-ground, or nursery-ground' [one month, or £1 over value or damage]. N.B.—The word 'fruit' does not occur in this section.

12. (Sec. 97).—Receivers and accessories [same punishment as the thief].

INDICTABLE FELONIES.

24-5 Vict. c. 96.

The following larcenies are indictable, and triable at General or Quarter Sessions (see page 47), except 20, 21, and 22, which must go to the Assizes. Bail in all cases 'discretionary.' In some instances, instead of committing an offender, he may be dealt with under the Summary Jurisdiction Act, 1879. See Preliminary Notes, Chapter V.

13.—Simple larceny. Felony at Common Law. [Pen. S. 5 y. ; or impr. 2 y., with whipping if a male under 16].

14 (Sec. 7).—If after previous conviction for felony. [Pen. S. 7—10 y. ; or impr. 2 y., with whipping if, &c.].

15. (Sec. 3).—Larceny as bailee—see page 291 [punishable as simple larceny.]

16. (Sec. 10) —Stealing any horse, mare, gelding, colt, or filly ; or any bull, cow, ox, heifer, or calf ; or any ram, ewe, sheep, or lamb [Pen. S. 5—14 y. ; or impr. 2 y.].

17. (Sec. 11).—Killing any of the above animals, or any other animal the stealing of which would have amounted to a felony (see Offence 3) with intent to steal the carcass, skin &c. [same].

18. (Sec. 26).—Stealing oysters from the bed [punishable as simple larceny].

19. (Sec. 27).—Stealing, or fraudulently destroying or obliterating, any 'valuable security' (for definition see sec. 1) other than a document of title to land [punishable as simple larceny].

20. (Sec. 28).—Stealing, or fraudulently destroying, &c., any document of title to land [Pen. S. 5 y. ; or impr. 2 y.].

21. (Sec. 29).—Like offence as to any will, codicil, &c., whether during the lifetime of the testator or after his death [Pen. S. 5 y.—Life; or impr. 2 y.].

22. (Sec. 30).—Stealing, &c., any record, writ, &c., or

other original document belonging to any court of record, or relating to the business of any office under Her Majesty, &c. [same as 21].

23. (Sec. 31).—Stealing, or breaking or severing with intent to steal, any glass or wood-work belonging to, or any metal or utensil, &c., fixed to any building; or any metal-work fixed in private land, or for a fence to any dwelling-house, garden, area, &c., or in any street, public place, or burial ground [punishable as simple larceny].

24. (Sec. 32).—Stealing, or destroying or damaging with intent to steal any tree, shrub, or underwood growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, if value, or injury done, exceed £1, or growing elsewhere if value or injury done exceed £5 [same].

25. (Sec. 36).—Stealing, or destroying or damaging with intent to steal, any plant, root, fruit, &c., as in Offence 10, after previous summary conviction [same].

26. (Secs. 38, 39).—Stealing ore or coal from mines [impr. 2 y.].

27. (Sec. 40).—**Stealing from the person** [Pen. S. 5—14 y.; or impr. 2 y.].

28. (Sec. 43).—If with violence—see ASSAULT, page 91.

29. (Sec. 45).—Demanding property with menaces, or by force, with intent to steal the same [Pen. S. 5 y.; or impr. 2 y.].

30. (Sec. 60).—Stealing in any dwelling-house, or building within the curtilage, any chattel, money, or valuable security to the value in the whole of £5 or more. See **HOUSEBREAKING** [Pen. S. 5—14 y.; or impr. 2 y.].

31. (Sec. 61).—Or to any lesser value, if by menace, any one therein be put in bodily fear [same].

32. (Sec. 62).—Stealing, to the value of ten shillings, any goods of woollen, silk, &c., laid or exposed during manufacture in any building, field, or other place [same].

33. (Secs. 63, 64).—Stealing from ships or boats in harbour,

river, or canal, &c. ; or from dock or wharf ; or from wreck [same].

34. (Sec. 67).—Stealing from employer, by any clerk or servant, or person employed in either capacity, any chattel, money, or security belonging to or in the possession of such employer. See EMBEZZLEMENT [same, with whipping if a male under 16].

35. (Sec. 74).—Stealing, by tenant or lodger, of any chattel or fixture let to be used with the house or lodging, value not exceeding £5 [impr. 2 y., with whipping as above]. If value over £5 [Pen. S. 5—7 y. ; or impr. 2 y., with whipping].

36. (31-2 Vict. c. 116, s. 1).—Stealing or embezzlement by partner or joint beneficial owner of money, goods, securities, or other property belonging to the partnership, or to such joint beneficial owners [punishable as simple larceny, No. 13].

LIBEL. A libel, in the criminal sense of the term (a), is defined by Blackstone as ‘a malicious defamation of any person, made public either by writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, or ridicule. The communication of a libel to any one person,’ he adds, ‘is a publication in the eye of the law ; and, therefore, the sending an abusive private letter to a man is as much a libel as if it were printed.’

A libel may be expressed by way of irony, or even under the form of question or conjecture ; and a writing or picture, if defamatory, is libellous, provided it appear evident who was the person alluded to or represented, although his name may have been suggested by one or two letters only, as is sometimes the case in the pages of a celebrated weekly

(a) It is not necessary to concern ourselves in these pages with the civil remedy for libel, under which proceedings are taken by Action to recover damages for the injury inflicted, or supposed to have been inflicted, by the words complained about. As regards language protected by the privilege of the occasion, see *Capital and County Bank v. Henty*, H. L. 1882, 52 L. J. 232 ; *Jones v. Duke of Westminster*, *infra*, p. 317.

periodical. Moreover, where a writing or drawing is obviously calumnious, the law will presume a malicious intent, which need not therefore be proved *aliunde*.

The famous dictum of Lord Mansfield, 'The greater the truth, the greater the libel,' rests upon the theory that the *provocation* produced by a libel, and not any falsity in the charge or suggestion itself, is the offence to be criminally punished. It may be much more wicked to devise a lie against a man's reputation than to denounce or expose him for what he has actually done. But the latter is, no doubt, in many cases the more exasperating injury of the two. A *false* libel, however, as we shall presently see, is in modern times punishable with distinct and additional severity.

Be this as it may, a person indicted for defamatory libel can only plead the justification of truth, upon the clear understanding that this is no sort of defence unless it appear to the court that he was not actuated by malice, and that it was *for the public benefit* that such matter should have been published. It follows, therefore, that where the alleged libel is contained in a private letter, it would be useless for the writer to insist or prove that he had only stated facts. The plea, thus maintained, may be an absolute answer to the charge. Otherwise the court is merely bound to consider, in passing sentence, whether the guilt of the defendant has been aggravated or mitigated by the offer of such an excuse, and by the evidence given on either side in consequence.

It is the duty of the Justice before whom a person is brought for the purpose of being committed or held to bail upon a charge of this nature, to ascertain (i) whether the matter in question be in point of law, and upon the face of it, a libel; (ii) whether the charge of publication is so far brought home to the accused as that he ought to be put upon his trial, *R. v. Carden*, Nov. 20, 1879, 5 Q. B. D. 1. It is not his duty to receive evidence which may be tendered for the purpose of showing the *truth* of that which is *prima facie* libellous. But if the charge be that of publishing a libel *knowing it to*

be false (see Offence 2, below), he is bound to receive evidence tending to disprove such guilty knowledge, which is of the very gist of the accusation, *R. v. Ellison*, Q.B., Nov. 1878. And, for this purpose, the question as to the truth of the alleged libel may incidentally become material in the first instance.

It would be beyond the scope of these notes to concern ourselves with ulterior questions which often arise at the trial. Whether or not a particular publication or report was justifiable, as 'fair comment,' has constantly to be argued out; as well as whether the publisher of a newspaper (for instance) has or has not been guilty of criminal negligence in inadvertently admitting libellous matter into his columns.

Newspaper Libels.—The following important enactments, enclosed within brackets, apply exclusively to newspapers: see 'Newspaper Libel, &c., Act, 1881,' 44-5 Vict. c. 60.

[1. (Sec. 1). The definition of a 'newspaper' furnished by this section excludes papers published at intervals exceeding 26 days.

2. (Sec. 2). 'Any report published in any newspaper of the proceedings of a public meeting shall be privileged, if such meeting was lawfully convened, for a lawful purpose, and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit.' But no defendant is thus protected who has refused to insert in his newspaper a reasonable letter of contradiction, &c.

3. (Sec. 3). No criminal prosecution may be commenced against any person responsible for the publication of a newspaper in England, for any libel therein, without the written fiat of the Public Prosecutor. See *R. v. Yates*, July, 1883, 52 L. J. Q. B. 778; Appeal, Jan. 15, 1885.

4. (Sec. 4). A court of summary jurisdiction, upon the hearing of a charge of libel against any such person, may receive evidence as to any matter of defence under section 2 or otherwise, and 'if of opinion, after hearing such evidence, that there is a strong or probable presumption that the

jury on the trial would acquit the person charged, may dismiss the case.'

5. (Sec. 5). If a court of summary jurisdiction be of opinion at such hearing that the libel, though proved, was of a trivial character, and that the offence may be adequately punished as follows, they are to cause the charge to be reduced into writing and read to the person charged, and should such person assent to the case being dealt with summarily, instead of going before a jury, they may summarily convict him, and adjudge a fine not exceeding £50.]

An application may, under certain circumstances, be made direct to the Queen's Bench for a **criminal information**. But this jurisdiction is of an extraordinary character, and entirely within the discretion of the court. It is as a rule only exercised in favour of persons filling some prominent situation, whether official or judicial, and attacked in that capacity, which gives the public an interest in the immediate vindication of their good fame, *R. v. Labouchere*, Feb. 9, 1884, 53 L. J. Q. B. 362. And the applicant is bound to pledge his oath in denial of the charge.

The following are indictable misdemeanours under the 6 & 7 Vict. c. 96 :—

1. (Sec. 3). Publishing, or threatening to publish, *any libel* upon any person—or threatening to publish, or proposing to abstain from publishing, 'any matter or thing' touching any other person, *with a view to extort money or its equivalent* [impr. 3 y.].
2. (Sec. 4). Maliciously publishing any defamatory libel, knowing the same to be false [impr. 2 y. (hard labour cannot be added), and fine *ad lib.*].
3. Maliciously publishing any defamatory libel [fine or simple impr. not over one year, or both].

Triable at Assizes.—If by letter, either in the county from which the letter was sent, or in that in which it was received. Bail 'compulsory.'

LIEN. A lien upon any article is a Common Law right to retain it until a debt be satisfied which arose in respect of it. Thus, if I send my horse to be shod, or my grain to be ground, the blacksmith or the miller may hold my horse or corn as security for the recompense of his labour. But neither can exercise this right in respect of a sum due for former work, at least without previous notice to me of their intention. An innkeeper has a lien, for payment of his bill, upon goods brought by his guest, even if those goods belong to a third party. He had, however, no right, until recently, to do more than hold them as a bare security. He could not sell them without at once extinguishing his Common Law lien, and exposing himself to an action for their value. He may now realise his security under certain conditions : see 'The Innkeeper's Act, 1878,' 41-2 Vict. c. 38.

LODGERS' GOODS PROTECTION. A remedy was required for the hardship and injustice suffered by lodgers, whose goods and furniture were liable to be seized under distress for rent owing by the tenant (the lodger's immediate landlord) to the superior landlord, under whom such tenant held. It is now provided (34-5 Vict. c. 79) that if such superior landlord levy on the goods of any lodger for rent due from his tenant, such lodger may serve the superior landlord or his bailiff with a declaration (not necessarily a statutory one) stating that the tenant has no right to or interest in the threatened goods, and that such are his own property, *or in his lawful possession*, and showing what rent, if any, is due from him to such tenant. This rent the lodger should tender to the superior landlord, or his bailiff, whose receipt will be a valid discharge. To the declaration is to be annexed an inventory of the goods referred to. Any distress afterwards proceeded with will be illegal, and the lodger may apply for the restitution of his property. Two Justices may inquire into the truth of his declaration and inventory, and make such order as may be just.

'A lodger,' said Bovill, C.J., 'is, generally speaking, a person whose [living and sleeping] occupation is of part of a house, in some degree under the control of a landlord or his representative, who either resides in, or retains possession of, or a dominion over the house generally, or over the outer door,' *Thompson v. Ward*, 40 L. J. C. P. 169; see also *Morton v. Palmer*, 51 L. J. Q. B. 7; *Ness v. Stephenson*, 9 Q. B. D. 245; *Thwaites v. Wilding*, 53 L. J. Q. B. 1, and *Heawood v. Bone*, Q. B., May, 1884, 48 J. P. 710.

Horses at livery are not protected by any similar enactment, and may be seized for arrears of rent due by the livery-stable keeper.

LOTTERIES. Under the 42 Geo. III. c. 119, the most furious and vindictive penalties are denounced against any person *publicly or privately* keeping any office or place for the drawing or throwing of any lottery whatever not authorised by Parliament, or knowingly suffering the same in his house. Not only is he subject to a fine of £500, to be recovered in the Exchequer, but he and all concerned in the transaction are rogues and vagabonds liable to three months' hard labour. Any one may prosecute; any one may arrest an offender *flagrante delicto*; and a Justice may order any person to break open doors and seize indiscriminately all persons found concocting a lottery or drawing for prizes, who are threatened with still harder treatment in case of resistance. The Act is wide and sweeping, and cannot be evaded by any pretext to the effect that money really subscribed in its contravention was paid in honest purchase, or merely as the price of entrance to an entertainment. Let us take an illustration from *Morris v. Blackman*, 10 Jur. N. S. 520.

An enterprising Professor, at Brighton, advertised, not long since, certain 'Wonderful illusions by Miss Flora, a lady of the Earth-man Tribe, accompanied by a performance upon musical rocks.' To increase the attraction of this unique entertainment, he added with picturesque extravagance

that he proposed to conclude with 'a distribution among the audience of a shower of gold and silver treasures, upon a scale utterly without parallel.' The unlucky man was as good as his word; at least in so far that he distributed some sparkling articles among the company. It would seem that the more costly of these 'treasures' had numbers attached to them, and that each was handed to the person who chanced to occupy a reserved seat marked with the corresponding figure.

A conviction under the Act was upheld, and the Professor went to Lewes gaol for seven days' hard labour—a sentence upon which one would be curious to learn the opinion of the Earth-man Tribe.

See also *Taylor v. Smetten*, May, 1883, 52 L. J. M. C. 101.

This Act, it should be remembered, in spite of its pious preamble about the unwariness of children and maids-of-all-work, was framed exclusively to protect the State lottery business from private competition.

A gentleman acting in this country for the so-called 'Agency for Public Funds,' Geneva, was on the 4th of May, 1880, fined £20 and costs at the Mansion House for publishing proposals for the sale of certain tickets or chances in the 'Imperial Royal Austrian 100 florin bond lottery loan and Grand Austrian prize-drawing,' such sale not being authorised by statute and being contrary to 4 Geo. IV. c. 60.

One can only hope that the concluding raffle at some Grand Fancy Bazaar may never culminate in a still worse catastrophe. Perhaps the most charitable party, if suspected of informing proclivities, had better be watched off the premises early in the afternoon. As to Private Theatricals with a benevolent object, see THEATRE.

Art Unions are specially protected under the 9 & 10 Vict. c. 48 and other statutes. Any voluntary association for the distribution of works of art is legal, if incorporated by charter, or if its deed of association has been approved by the Privy Council.

LUNATICS. For legal, as distinguished from medical purposes, Lunatics are divided into three classes, viz., Private lunatics, including in this term all who are not paupers; Pauper lunatics, who are generally supported at the charge of their parish or county; and Criminal lunatics, who are detained in custody of the law.

PRIVATE LUNATICS.

The central supervising power in this country, as regards the care and treatment of lunatics in general, is represented by the 'Commissioners in Lunacy,' appointed under the 8 & 9 Vict. c. 100.

Any person who is out of his mind may be 'found lunatic upon inquisition' in the course of proceedings directed by the Court of Chancery; or he may be treated as a lunatic by that court, so far as regards the management of his property, upon a simpler procedure. Neither course, however, is necessary as a preliminary to placing him in confinement should such a step become desirable.

Establishments (other than County Asylums, of which we shall speak by and by), into which these persons are received, are known either as 'Houses,' or 'Hospitals.' The first are places in which patients are treated as matter of business, and for profit. The latter are institutions of a more charitable nature, supported either by endowment or voluntary subscriptions.

Every 'house,' intended for the reception of the insane, must be licenced by the Commissioners in Lunacy, if within their immediate district, which includes all London, Westminster, and Southwark, and seven miles beyond their boundaries in every direction. Outside this district, Justices in Quarter Sessions are the licencing authorities for their respective counties. No licence is granted for a term exceeding 13 months. 'Hospitals' require no licence, and need only be registered by the Commissioners.

Before any insane person, *not found so by inquisition*, can be confined in a 'house' or 'hospital,' an order or request for his reception must be addressed to the proprietor or superintendent, by some relative or friend of the proposed patient, founded upon the certificate of two medical men, by whom the latter must have been examined separately. Each is bound to state in his certificate the *facts* upon which he has formed his opinion; and the giving a false certificate is punishable as an indictable misdemeanour.

In order to provide against any neglect or ill-usage of the unfortunate persons thus restrained, provision has been made for the appointment, in Quarter Sessions, of Visitors to 'houses' licenced by that authority. Three or more Justices, with a paid medical assistant, are to be detailed for that purpose, and a general, searching, and effective system of visitation has been ensured. The Commissioners themselves act as visitors within their immediate district; and their superintendence in this respect extends, collaterally with that of the visiting Justices as regards 'houses,' to every 'house' and 'hospital' throughout England and Wales. They inform us, in a recent Report, that there were in England and Wales, on the 1st of January, 1882, 96 licenced houses, containing altogether 4883 patients.

Nothing in the above precludes any *single* lunatic from being taken care of, without special authority, by relatives or friends. But in no case is any person in charge of a lunatic exempt from the interference and control of the Commissioners. And, *if any profit is to be derived* from the charge, the patient must only be received upon production of the regular certificates; and, although the house need not be licenced, it will nevertheless be regularly visited. Moreover, in the event of failure by the person in charge to comply with any of the regulations applicable to his case, he may at once be indicted for a misdemeanour.

PAUPER AND QUASI-PAUPER LUNATICS.

Under the 'Lunatic Asylums Act, 1853' (16 & 17 Vict. c. 97), every medical officer of a parish or union, knowing of any *pauper* lunatic within his district, is within three days to give notice to the relieving officer, or an overseer. Such person being thus, *or otherwise*, aware of the fact, is within three days to give notice to a Justice of the county or borough. Such Justice is, again within three days, to procure that the lunatic be brought before, or seen by him, or some other Justice, when an examination of the case is to be made, with the assistance of a medical man. And if the latter certify, and the acting Justice be satisfied that the pauper is a lunatic, and ought to be detained under treatment, he will by his order direct him to be received into the county or borough asylum, to which the relieving officer or overseer is at once to convey him. A Justice may take action upon his own knowledge of the case, without formal notice; and if, for any reason, the pauper cannot conveniently be taken before a Justice, an officiating clergyman of the parish, with the relieving officer or overseer, may make an order for his removal and reception (sec. 67). In case of deficiency of room, the pauper may be sent to an asylum for any other county, &c., or to any house or hospital licenced or registered as already mentioned. The expenses of his examination and conveyance are payable by the guardians of the union to which he is chargeable (sec. 69, and 24-5 Vict. c. 55, s. 6).

Provision is made (sec. 96) for enforcing payment by the last mentioned guardians of his expenses while in confinement; and (sec. 97) for transferring this burden to the place of his last legal settlement, if such place can be discovered, or to the county (sec. 98). Should it turn out, however, that the lunatic is possessed of any private means they may be made available towards his support (sec. 104); and the liability of any relation or other person to maintain him

(see p. 352) is expressly declared to be unaffected by the above provisions.

A similar course is to be adopted with reference to any lunatic *found wandering at large*, who is to be at once apprehended by the relieving officer or overseer. But any relative or friend may take such lunatic under his care, upon satisfying a Justice that he will be properly treated (sec. 68).

The case of lunatics who, being neither paupers nor found wandering at large, are not under proper care or control, or are ill-used or neglected by the persons having charge of them, is also dealt with by section 68. *Two* Justices must, in this instance, conduct the necessary examination; and may direct the patient's removal to an asylum, &c., as above.

CRIMINAL LUNATICS.

Under this head are included persons found upon arraignment to be insane, or found 'guilty but insane,' by a jury (46-7 Vict. c. 38), or becoming insane during imprisonment. For these a central asylum has been provided at Broadmoor, subject to the special provisions of 23-4 Vict. c. 75. As regards the criminal responsibility of persons of unsound mind, see the answers of the Judges in the House of Lords, in *M'Naughten's Case*, 10 Cl. & Fin. 200. [See also the 'Criminal Lunatic Act, 1884,' 47-8 Vict. c. 64].

COUNTY ASYLUMS.

The Justices of every county and the Council of every borough, were in the year 1853 (16 & 17 Vict. c. 97) required to provide themselves with efficient Lunatic Asylums without further delay; defraying the necessary expenditure out of their county and borough rates. These asylums are intended, primarily, for pauper lunatics, belonging to each county or borough; and it is only when the accommodation in any case is more than sufficient for this purpose that

paupers from other counties, as well as patients who are not paupers, may be received. Every Asylum is placed under the control of a 'Committee of Visitors,' composed of seven or more Justices, appointed annually in Quarter Sessions, or at a special meeting in the case of boroughs. The Committee usually meet once a fortnight at the asylum. Its entire management in every respect is virtually placed in their charge, and they exercise an absolute domestic authority over its whole family of officers and inmates. It is their duty to furnish a report annually to the Justices of their county or borough; and a copy is sent to the Commissioners in Lunacy, who here, as elsewhere where insanity is in question, exercise a general superintending power.

It is difficult to enter one of these vast establishments without a certain sense of self-satisfaction, at the expense of our ancestors. We will not reproach them with the old wickedness of 'the dark-house and the whip.' But, in the opening days of the present century, the notion of an Atlantic steamer, or of a train running fifty miles an hour, seemed less preposterous than that of a thousand madmen brought together at random under one roof, not one of whom should be locked up by himself, or bound by the slightest mechanical restraint. Yet this is what may be seen any day at Hanwell and elsewhere. For chain and dungeon we have large and cheerful rooms, pictured corridors, and broad pleasure-grounds. All that choose may work. The women wash, cook, stitch, and help in the wards. There is field and garden work in plenty for the men, over our hundred acres. They may be trusted to tend the cows, of which we possess some six-and-twenty. They bake, brew, paint, carpenter, tailor, and kill the pigs. A trifling concession at dinner-time is all they ask in the way of wages, not forgetting a taste, in one shape or another, of the all-coveted weed. Walking parties, pic-nics, musical evenings, and even a 'calico ball' are among the small excitements of a necessarily monotonous routine.

On the 1st of January, 1883, there were under treatment at Hanwell :

	Males.	Females.
Employed	579	696
Unemployed	112	238
Sick	59	155
	<hr/> 750	<hr/> 1089

Total patients, 1839. Estimated annual value of their labour, £4138.

It is the custom, when a patient appears to be practically cured, to allow him or her out on leave for a month, to visit their friends and try how they find themselves when relieved from all restraint. Funds are provided for their keep, and they are simply required to report themselves at the end of the time, for final leave-taking and discharge. A nice-looking young woman, whom the doctor had pronounced quite sane, returned some time since and was asked the usual question as to how she had been during her outing. 'Thank you, gentlemen, as well as ever in my life. The fact is, I took the chance to get married. You see, George and I had been engaged these two years, and we both agreed that I wasn't likely to get such a holiday again. So we had it over and done with.'

Now, it so happens that, although a raving madman may be legally married if he can only find a lucid interval long enough to go to church in, a person once committed to an asylum cannot engage in lawful matrimony until formally discharged as of sane mind. Such at least was our reading of 51 Geo. III. c. 37. It was very embarrassing; and our congratulations must have seemed dismally cool. It is no light matter to place upon the conscience of an innocent couple the fact that they are not united in point of law. It is easy to say that they have only to marry a second time. But it is perhaps not quite fair to either side to offer to the other the option of retiring. And everybody knows how

village would talk, if two married people couldn't sleep in quiet without perpetually going to church over it; and how very undesirable it would have been to bring the mad-house part of the business conspicuously to the front. The story would have been too piquant to be forgotten. So we hoped that the knot was already sufficiently tight for all purposes human and divine, and judged that we need not suggest that it should forthwith be untwisted and re-tied. The case was casually noticed under the title *BIGAMY* (a).

MALICIOUS INJURIES ACT. Malice conceived against the owner of property injured is no necessary ingredient in an offence under the 24-5 Vict. c. 97. If the act were wilfully or wantonly done, without lawful excuse, with intent to commit an injury, or in reckless disregard of probable consequences, it is enough. And it is no excuse to allege that the resulting mischief was wider than the perpetrator either intended or expected. The 52nd section (see Offence 7) does not apply to cases where the party acted under a reasonable supposition that he had a right to do the act complained of; nor to any trespass, not being wilful and malicious, committed in hunting, fishing, or the pursuit of game. See

(a) It has been suggested to me that the Act of Geo. III. would probably not be held applicable to the *détenus* of a County Asylum. But, even under this assumption, the committee were perfectly justified in the conclusion at which they arrived. Every person committed to their keeping being presumably of unsound mind would be presumed to continue so, until discharged under 16 & 17 Vict. c. 97, s. 79. Hence, in the case of any such person marrying before discharge, the presumption of law would be that such marriage was void *ab initio*. And this presumption could only be rebutted by proof of the existence of a contracting mind at the moment of assent, a matter manifestly of extreme difficulty. The Act of Geo. III., in the cases to which it applies, sweeps away even this slender possibility. In one class of assumed marriages, at all events, *i.e.*, where one of the contracting parties has been 'found lunatic upon inquisition,' proof positive of the most absolute recovery, short of the regular certificate, would count for nothing, and the result would be as stated in our Note on *BIGAMY*, page 104.

White v. Feast, 26 L. T. 611. The former part of this exception is by no means confined to cases in which a defendant sets up a 'claim of right,' technically so called (see page 367) *in bar of the jurisdiction*. It is obvious, moreover, that 'reasonable supposition,' &c., is admissible as a defence in cases in which the accused had really no right whatever to act as he did. Otherwise the indulgence would be superfluous.

Any person 'found committing' any offence against this Act, (see page 80) may be immediately apprehended without warrant by any constable, or the owner of the property injured, or his servant, and carried before a Justice.

And, in the case of a first conviction, the court may, if it shall think fit, discharge the offender upon his making due satisfaction for damages and costs (sec. 66, and see page 37).

It is important to remember that, by sec. 67, when any person summarily convicted under this Act shall have paid the sum adjudged to be paid, or shall have suffered the imprisonment awarded for non-payment, or shall have been discharged from conviction as above, he is thereby released from all further proceedings, whether by action or otherwise, for the same offence.

The following offences may be dealt with by one Justice. See, however, SUMMARY JURISDICTION, 4 and 5. Information upon oath. No distress. Hard labour may be ordered in all cases. Time of *alternative* imprisonment according to scale, page 428. Appeal to General or Quarter Sessions (see page 73), where sum adjudged to be paid exceeds £5, or where imprisonment is ordered, or where the conviction is before one Justice only.

OFFENCES.

1. (Sec. 22). Destroying or damaging any tree, shrub, or underwood wherever growing to amount of 1s. and under £5; or, if growing in any park, &c., (see Offence 11), under £1 [3 m.; or pay damage and £5]. If damage be under 1s. see Offence 7.

2. (Sec. 23). Destroying, or damaging with intent to destroy, any plant, root, fruit, or vegetable production, growing in any garden, orchard, nursery, greenhouse, &c. [6 m.; or damages and £20].
3. (Sec. 24). Destroying, or damaging with intent to destroy, any cultivated root or plant used for food of man or beast, medicine, distilling, dyeing, or manufacture, growing in any land open or enclosed not being a garden, &c. [1 m.; or damages and £1].
4. (Sec. 25). Breaking or destroying fences, walls, gates, &c. [damages and £5].
5. (Sec. 37). Injuring telegraphs [3 m.; or £10].
6. (Sec. 41). Killing or wounding any dog, bird, or other animal (not cattle) ordinarily kept [6 m.; or damages and £20]. See page 345.
7. (Sec. 52). 'Damage, injury, or spoil to or upon any real or personal property whatever, either of a public or private nature, for which no punishment is hereinbefore provided,' see page 310 [2 m.; or forfeit £5, and compensation not exceeding £5]. If damage be over £5, the offence is indictable; see Offence 22. This section does not appear to have reference to damage indirectly or unintentionally caused by any act, however unlawful in itself.

THE FOLLOWING OFFENCES ARE INDICTABLE.

All triable at Sessions, except 8, 13, 15, and 20. All felonies, except 14, 16, 17, and 22. Bail, 'discretionary.' Where an asterisk is annexed to the punishment, the offender, if a male and under 16, may be whipped.

8. (Sec. 14). Destroying or damaging woven goods in loom or frame, or weaving machinery, &c. [Pen. S. 5 y.—Life; or impr. 2 y.*].
9. (Sec. 15). Agricultural machinery [Pen. S. 5—7 y.; or impr. 2 y.*].

10. (Sec. 19). Hopbonds on poles [Pen. S. 5—14 y. ; or impr. 2 y.*].
11. (Sec. 20). Destroying or damaging any tree, shrub, or underwood, growing in any park, garden, orchard, or avenue, or ground adjoining or belonging to a dwelling-house, if injury exceed £1 ; or growing elsewhere (21) if injury exceed £5 [Pen. S. 5 y. ; or impr. 2 y.].
12. (Sec. 28). Watering mine, obstructing passages, or (29) damaging any mine engine or tackle [Pen. S. 5—7 y. ; or impr. 2 y.*].
13. (Sec. 30). Damaging sea-walls, river-banks, &c., to danger of overflow—destroying wharf, lock, tow-path, sluices, &c., of any harbour, navigable river or canal [Pen. S. 5 y.—Life ; or impr. 2 y.*].
14. (Sec. 32). Destroying dam of fish-pond, &c., or liming the water to kill fish [see page 345]—or destroying dam of any millpond, reservoir, &c. [same as 12].
15. (Sec. 33). Destroying any bridge, aqueduct, or viaduct over or under which highway, railway, or canal passes, or injuring same with intent to obstruct such passage [Pen. S. 5 y.—Life ; or impr. 2 y.*].
16. (Sec. 37). Telegraphs—if indictment laid [2 y.].
17. (Sec. 39). Destroying or damaging any book, work of art, or curiosity, in any museum, gallery, library, &c., open to the public—or monument, glass, or ornament, in any church, &c.—or statue or monument exposed to public view, or the fence thereof [6 m.*].
18. (Sec. 40). Killing or wounding cattle [Pen. S. 5—14 y. ; or impr. 2 y.].
19. (Sec. 46). Damaging ships [Pen. S. 5—7 y. ; or impr. 2 y.].
20. (Sec. 47). Masking lights, showing false lights, or doing anything tending to loss of ship or boat [Pen. S. 5 y.—Life ; or impr. 2 y.*].
21. (Sec. 48). Removing buoys, &c. [Pen. S. 5—7 y. ; or impr. 2 y.*].

22. (Sec. 51). Damage, injury, or spoil (as in Offence 7), if over £5 [impr. 2 y.]. If offence committed between 9 p.m. and 6 a.m. [Pen. S. 5 y. ; or impr. 2 y.].

For malicious injuries by fire, see ARSON ; to the person, see ASSAULT page 90.

MAN-TRAPS. Subject to the proviso below, any person setting any spring-gun or man-trap, is guilty of a misdemeanour, and liable, under the 24-5 Vict. c. 100, s. 31, to 5 years' penal servitude or two years' hard labour. The sense of security, however, which is afforded by a man-trap in the hall at night is denied to nobody. It is expressly provided that no penalty shall attach to the employment of this apparatus, or a spring-gun, *inside* one's dwelling-house, at any time between the setting and rising of the sun.

MARKETS AND FAIRS. A legal Market, or a Fair, which is only a market held at distant intervals, can only, it is said, exist by virtue of a charter from the Crown, or by immemorial usage, from which the original existence of some lost charter will be presumed.

The 'Markets and Fairs Clauses Act, 1847,' applies only to markets, &c., authorised by subsequent Acts of Parliament which may incorporate its provisions. Under this Act, 'any person other than a licenced hawker [or certificated pedlar] who shall sell or expose for sale in any place within the prescribed limit, except in his own dwelling-house or shop, any article in respect of which tolls are, by the special Act authorised to be taken in the market,' is liable to a penalty not exceeding 40s.

Under the Public Health Act, 1875 (sec. 166), every Urban Authority has power to provide a market-place, &c., and to take tolls ; and the Act of 1847, so far as necessary for the above purpose, is incorporated therewith.

Market Overt.—A sale in open market creates, as a general rule, a good title in the purchaser, irrespectively of the

vendor's right to dispose of the property. This is, of course, upon the supposition that the buyer is no party to any mis-dealing. 'It is a necessary policy,' writes Blackstone, 'that a purchaser *bond fide*, in a fair, open and regular manner, should not afterwards be put to difficulties by reason of the previous knavery of the seller,' and 'if a man purchase his chattel in market overt, he obtains a title which is good against all the world'; *per* Lord Cairns, in *Cundy v. Lindsay*, Mar. 1878, 47 L. J. N. S. 481. Market overt, in the country, is only recognised upon the regular market day. In London, every week-day is market day, and every public shop, except a pawnbroker's, market overt for such goods as the owner professes to trade in. Property in a horse, however (under the 31 Eliz. c. 12), is not affected by sale in market overt, unless the toll-taker, or clerk, upon sufficient evidence, enter in his book the name, condition, and abode of the vendor, and the price paid for the animal. If any of these points be neglected the sale is void, and the owner may at any time seize or bring an action for his horse, wherever he may find him.

MASTER AND SERVANT. A master may be criminally responsible for the fault of his servant, if the latter act as his agent, and circumstances raise the presumption that he was authorised by his master to do the prohibited act. In some cases the master's liability is matter of special enactment, see, for example, *PAWNBROKERS*, p. 332. On the other hand, a servant cannot shelter himself, personally, from the consequences of an offence by merely pleading obedience to his master's order.

As regards domestic or menial servants, any claim for wages or otherwise must be asserted in a Court of Civil Jurisdiction. The following points may, however, be noticed as matters of general interest. A domestic servant is always considered as hired subject to a month's wages or a month's warning, unless the contrary be distinctly proved; and, if

dismissed with a month's wages, is not entitled to compensation for loss of board and lodging. Such servant may be dismissed at any time for serious misconduct, wilful disobedience, or habitual neglect. And when so dismissed, or should he leave without giving proper notice, or without some sufficient reason, he is not entitled to wages (not then actually due) in respect of the time during which he has served. The ground of dismissal must, however, be a reasonable one. It has been decided that a master cannot discharge a governess without notice, upon discovering that she had been married and divorced. A servant disabled from work through illness, is nevertheless entitled to wages, until regularly dismissed upon notice. See *K. v. R.*, Exch. 22 January, 1878, 42 J. P. 264, a very strong case, inasmuch as the plaintiff's illness arose through his own misconduct, previously to engaging in service.

Under the 24-5 Vict. c. 100, s. 26, any master or mistress legally liable to provide any servant with clothes, food, or lodging, who shall wrongfully neglect to do so—or who shall do any bodily harm to such servant, calculated to endanger life, or permanently injure health, is guilty of an indictable misdemeanour punishable with penal servitude.

Servants' characters—Privileged communications.—It has long been settled that no master is bound to give a servant a character. As regards transactions of this description, the following offences are punishable under 32 Geo. III. c. 56 :—

1. Personating master, and giving false character.
2. Falsely pretending that any person had been in his service ; or had served in any particular capacity.
3. Falsely asserting that any person left his service at other than the true time.
4. Offering himself or herself as a servant, and pretending to have served where he or she had not.
5. Offering himself, &c., with false or forged character ; or

adding to, or altering in any manner, any character given by a former employer.

6. Falsely pretending never to have been in service.

Penalty in all the above cases £20, with hard labour in default as per scale page 428, recoverable before two Justices. Half to the informer, half to the parish poor. Appeal to Gen. or Quarter Sessions (see p. 73).

In *Jones v. The Duke and Duchess of Westminster*, Exch. April 25, 1879, the plaintiff, a lady's maid, brought her action for libel alleged to be contained in a character written by the Duchess. Part of this character touched upon matters which had taken place since the plaintiff had left her service. The Chief Baron observed, 'The Duchess was clearly bound by law and in duty, if she knew of any circumstance subsequently happening, and of which the inquirer was entitled to be informed, to tell her what she conscientiously believed to be the truth. . . . Ladies are placed in a very difficult position. There is a painful but imperative duty to answer freely, unreservedly, and truly, as far as conscientious belief is concerned, with respect to everything that can affect the matter. This letter is true in substance from beginning to end, or, at all events, the Duchess was perfectly justified in believing it to be true; and it is strictly within the privilege, because within the duty.'

'It appears to me,' said Sir G. Jessel, M.R., in a more recent case, 'that if you ask a question of a person about the character of another person with whom you wish to have any dealings whatever, and he answers *bonâ fide*, that is a privileged communication. Society could not go on without such inquiries. The whole doctrine of privilege rests upon the interest and the necessities of society;' *Waller v. Lock*, App. Oct. 29, 1881, 45 L. T. N. S. 242.

See EMPLOYERS AND WORKMEN, TRUCK ACT, WORKMEN.

METROPOLIS. The word 'metropolis' in modern legislation is usually defined as having the same meaning as in

the 'Metropolis Management Act, 1855,' schedules A, B, and C. It there includes the City of London, and consists of seventy-nine named parishes, besides the Charterhouse and Inns of Court.

The METROPOLITAN POLICE DISTRICT includes, with the exception of the City, the whole of Middlesex, and an area bounded by a circle having a radius of 15 miles from Charing Cross. Within this important district, containing in round numbers the population of Ireland, the provisions of the 2 & 3 Vict. c. 47 and c. 71 (consolidated as one Act) are in force. As regards this Act, see POLICE OF TOWNS, page 346.

The jurisdiction of the Central Criminal Court extends over the City of London and county of Middlesex, and parts of Essex, Kent, and Surrey. The Court of Q. B. may, however, order any person charged with any offence outside this jurisdiction, to be tried at the Central Criminal Court, and the indictment may be removed thither by Certiorari accordingly.

The Lord Mayor, Alderman, and Recorder are City Justices, and as regards summary proceedings and commitment for trial have, generally speaking, exclusive jurisdiction within its limits. Outside the City, the Police Magistrates, who are all Justices for Middlesex, Surrey, Herts, Essex, and Kent, have similar jurisdiction within the divisions assigned to their respective courts. Their warrants to apprehend may be executed throughout England without backing. As regards their special powers and disabilities, see page 6. No ordinary Justice has authority to act within the division assigned to a police magistrate in matters arising within such division, except in petty, special, or quarter sessions, or in the enforcement of rates.

MILITIA. By the 'Militia Act, 1882,' (45-6 Vict. c. 49—commencement Jan. 1, 1883) the 'Militia (Voluntary Enlistment) Act, 1875,' has been repealed and re-enacted, with various modifications rendered necessary by the passing of

the 'Army Act, 1881,' and otherwise. The force can only be embodied, *i.e.*, placed upon a war footing 'in case of imminent national danger, or of great emergency' (sec. 18), and so vast is the significance attached to this step that Parliament, if then separated by adjournment or prorogation, must thereupon be assembled by proclamation within ten days (sec. 19). We are only concerned, however, in the present Note with those particular points in connection with the service which require the interference of a Justice of the Peace.

Enlistment.—(Sec. 7, *et seq.*) Every militiaman is to be enlisted for some county, to serve for such period not exceeding six years as may be prescribed. All the regulations with reference to enlistment mentioned under the title **SOLDIERS** (page 415) apply equally to the militia recruit. Such recruit may, however, be attested not only by a Justice of the peace but by any lieutenant or deputy lieutenant of any county, or by a regular or militia officer.

If any person (sec. 10) having been discharged 'with disgrace' from any part of Her Majesty's forces afterwards enlist in the militia without declaring the circumstances of such discharge, or if any person is knowingly concerned, when subject to military law, in the enlistment in the militia of any such person, &c., he is liable to be tried by court-martial, or to be convicted by a court of summary jurisdiction, and sentenced to imprisonment with hard labour for not less than two nor more than six months.

Fraudulent Enlistment.—(Sec. 26). Any militiaman unlawfully enlisting in any of the auxiliary or reserve forces—or any person belonging to the auxiliary or reserve forces unlawfully enlisting in the militia, is liable to be tried by court-martial, or to be convicted by a court of summary jurisdiction and sentenced to imprisonment with hard labour for not less than one nor more than three months, or to a fine of not less than £5 nor more than £25, with imprisonment and hard labour in default of payment for not less than one month and not more than the maximum term allowed by

law for non-payment of the fine. Half the above penalties are incurred by a mere attempt to offend as above.

Deserters.—(Sec. 23). Any militiaman who, without lawful excuse, fails to appear at the time and place appointed either for preliminary training—or for annual training—or for assembling or embodiment (in which latter case only is he technically a militia ‘deserter’) is liable to be tried by court-martial, or to be convicted by a court of summary jurisdiction and fined not less than 40s. nor more than £25, with imprisonment and hard labour in default of payment for not less than seven days and not more than the maximum term allowed by law for non-payment of the fine.

All the provisions of sec. 154 of the Army Act, as to the apprehension, &c., of soldier deserters (see page 417), apply equally to a militiaman who is a deserter or absentee without leave; ‘and a man who under that section is delivered into military custody, or committed for the purpose of being so delivered, may be tried as provided by this Act.’ Any person falsely representing himself to be a deserter or absentee without leave is punishable under the same section (24); while any one who persuades or attempts to persuade a militiaman to absent himself without leave, or assists him in so doing, or conceals or employs him, &c., is liable, under section 25, to a fine of £20. Persuading, &c., a militiaman to ‘desert’ is punishable as under section 153 of the Army Act—see page 417.

Legal Proceedings.—(Sec. 42). Any offence cognisable by a court of summary jurisdiction may be dealt with as provided by the Army Act, section 166—see SOLDIER, page 421. But fines, instead of going into the Exchequer, are to be ‘paid to the commanding officer of the militia to which the militiaman belongs,’ to be accounted for by him in prescribed manner. Proceedings against a militiaman or ex-militiaman may be instituted at any time within two months after his offence becomes known to his commanding officer (sec. 43). ‘An alleged offender shall not be liable to

be tried both by court-martial and by a court of summary jurisdiction, but may be tried by either, according as may be prescribed by orders or regulations' to be issued under section 4 of the Act.

MILK. Every fraudulent tampering with milk sold, whether by the addition of water, &c., or the subtraction of cream is punishable under the ADULTERATION OF FOOD Act, see Offences 3, 5. Ordinary milk, as we learn in these cases, contains no less than 87 per cent. of water as it comes from the cow, the balance being made up of curd, chiefly caseine (4), butter, or milk fat ($3\frac{1}{2}$), sugar of milk ($4\frac{3}{4}$), and ash ($\frac{3}{4}$).

The 'Food and Drugs Act Amendment Act, 1879' (see ADULTERATION, &c.), provides (sec. 3), that any medical officer of health, inspector of nuisances, &c., or police constable charged with the execution of the Act, 'may procure, at the place of delivery, any sample of any milk in course of delivery to the purchaser or consignee, in pursuance of any contract' of sale; and that proceedings may thereupon be taken, as if such officer, &c., had purchased the milk from the seller under section 13 of the principal Act (see page 61). But it seems that the officer is not bound to take all the steps required by the following section (14), which would be to render the amending Act inoperative, *Rouch v. Hall*, Nov. 15, 1880, 6 Q. B. D. 17. Penalty on seller or consignee, or person in charge, refusing to allow such officer, &c., to take the quantity required for analysis, £10, recoverable by distress.

Under the 'Dairies, Cow-sheds and Milk-shops Order, July, 1879,' every Local Authority is bound to keep a register of all persons in their district carrying on the trade of cow-keepers, dairymen, or purveyors of milk; and no person, as a rule, may carry on any such trade unless registered. The Order contains provisions with reference to the lighting, ventilation, cleansing, drainage, and water supply of dairies and cow-sheds, and the contamination of milk, and empowers Local Authorities to make regulations for the cleansing of

dairies, cow-sheds, milk-shops, and milk vessels. See CONTAGIOUS DISEASES (ANIMALS) ACT.

MISCHIEF. Every act of 'mischief' to property is a 'malicious injury' in the eye of the law, provided it fall within the conditions which will be found at page 310. It is no excuse to say that the perpetrator 'meant no harm,' if he did something which he had no business to do, and which was followed by its natural consequence (a). A man wantonly threw a lucifer match into an empty cask standing in the street. The cask had contained benzoline. There was an explosion and a boy was killed. The offender was sent for a month's hard labour by Thesiger, L.J., upon the ground that he did not know what the contents of the cask had been, and had no business to meddle with it, (*Times*, Feb. 5, 1880). A mischievous practical joke may end as did the case of the boy and the trap-stick, see page 324, or the still more outrageous pleasantry recorded in *R. v. Martin*, ante 90 (9). In the Criminal Code Bill of a recent session it was proposed to include under the above title the whole of the offences comprised in the catalogue of MALICIOUS INJURIES above noted. See also page 245.

MISDEMEANOUR. This is an old Common-Law term which, in its broader sense, includes every possible act of misbehaviour cognizable by the courts which does not amount

(a) A case which might easily have divided the Court of Queen's Bench came under discussion the other day. A printer's devil altered one single letter of a word which he had set up, after the proof had been revised by the author. It was clearly done by way of a lark; the word, as transformed, being horribly grotesque, and this in the middle of a solemn poem! It was not discovered until the whole edition of an expensive annual had been printed and circulated. Author and editor were of course alike furious at the disfigurement, which they would have given a good deal to have been able to remove. Whether the perpetrator of this truly diabolical joke could have been rewarded with two months' hard labour under the Malicious Injuries Act, sec. 52, was the question. *Seemle*, yes.

to a Felony. But, among lawyers, the word is habitually used with reference only to *indictable* offences (see page 7), which are thus distinguished into felonies and misdemeanours. Perjury, conspiracy, night-poaching, false pretences, serious assaults, &c., &c., are all indictable misdemeanours. So is every act of disobedience to a positive statute, and, generally speaking, every *attempt* to commit, or to induce another to commit a felony or an indictable misdemeanour.

Every convicted misdemeanant (unless some definite punishment has been assigned to his particular offence) is liable to fine or imprisonment, or both, at the discretion of the court. This is his predicament where the conduct charged has not been forbidden by any statute, but simply violates the common law of the realm, as, for instance, in the matter of wilfully digging up or disturbing the bodies of the dead, whether in consecrated or unconsecrated ground: see per Byles, J., in *Foster v. Dodd*, L. R. 3 Q. B. 77.

MURDER AND MANSLAUGHTER. It might have appeared pedantic to place this Note under its proper title, 'Homicide.' At all events, nine people out of ten, in search of any information which it may contain, would have turned in the first instance to the above words. Homicide is the general term applicable to the destruction of human life. It includes murder, manslaughter, justifiable killing, and the infliction of death by what the law calls misadventure. The two leading terms are those employed when we speak of the matter as a *crime*, and we shall consider them together, since, although in theory separated by an important demarcation, they are, in practice, often divided only by a line of extreme nicety.

Murder has been defined to be where a person of sound mind unlawfully kills any reasonable creature, in being, and under the Queen's peace, with malice aforethought either express or implied. In every case where homicide is proved, the law, in the absence of evidence to the contrary, presumes

that the killing was unlawful and malicious—in other words, that it was an act of murder. It is for the prisoner to establish, if he can, the existence of any matter of excuse or alleviation. It is for the jury to decide whether the matter alleged ever actually existed. It is for the judge to determine how far, if established, it tends to neutralise the presumption, or to diminish the magnitude, of the prisoner's guilt.

Thus, the latter may show, if he can, that the killing was either matter of pure misadventure, for which he was not to blame; or that it was justifiable under the circumstances. In either case his answer would be complete. As regards the latter line of defence, it is permissible to repel force by force, without regard to consequences, in defence of one's person or property, when an assailant endeavours by violence or surprise to commit an open felony such as rape, robbery, burglary, and the like. In these cases a person thus assailed, or who reasonably supposes that such an offence is being or about to be committed, is justified in taking life in the way of self protection; and a servant or other person may lawfully assist in thus preventing the crime; see page 247.

But unless an act of homicide fall *strictly* within these regions of excuse or justification, it amounts either to actual murder as above defined, or to the minor offence of killing unlawfully but without malice aforethought, which is known by the name of manslaughter. Thus the man who kills another by accident or misadventure may excuse himself, as we have just said, if he were strictly free from blame. But if the 'accident' were the result of carelessness, or of some idle, dangerous, or unlawful proceeding, he would be guilty of manslaughter, as in the recent case of three volunteers whose conviction was the result of rifle-practice carried on without proper precaution: *R. v. Salmon*, C. C. R. Dec. 4, 1880, 6 Q. B. D. 79. A boy who took the 'trap-stick' out of a cart, with no other object than to have the fun of seeing the men tumble into the road, was thus convicted, when one

of them broke his neck. The same result would follow if, under the plea of self-defence, a man were to kill his assailant upon a mere assault, when there was no plain manifestation of a felonious intention.

In the two last instances, the legal presumption of malice may be supposed to have been rebutted by the general circumstances of the case. For this reason, they would be manslaughter and not murder. But the great question is, when and how far, upon general principles, the law will relax in this presumption in favour of the accused.

First of all, as Blackstone reminds us, the law pays too much regard to human frailty to place a hasty act upon the same footing with a deliberate one. Thus, if upon sudden quarrel two men fight, and one kill the other, this is manslaughter and not murder. So also if a man be greatly provoked by some outrageous act of personal aggression and immediately kills his assailant, the act, although not within the excuse of self-defence, may nevertheless be permitted to pass as manslaughter, there being no previous malice. But in this, as in every other case of homicide upon provocation, if there be sufficient cooling-time, and the person provoked afterwards kill the other, this is deliberate revenge and not heat of blood, and nothing less than murder.

No provocation, be it observed, which can be given by words or gesture merely, is sufficient to absolve the party resenting them by a deadly blow from the worst consequences of his act. Moreover if, in any case, the violence be out of all proportion to the provocation offered, it will be in itself an indication of a malicious mind, and the killing will be murder.

The use of a dangerous weapon may make the greatest difference in the character of the act. If it were in the prisoner's hand at the commencement of the affair, or if he snatched it up in the heat of passion, it would not necessarily convert what would otherwise be manslaughter into murder. But it has been held otherwise where a person, in anticipation of a

fight, placed a knife ready to hand. And in any event it may aggravate enormously the guilt of the offence, considered merely as manslaughter, and entail a severity of punishment inferior only to the capital sentence.

As an instance of the legal implication of malice, the killing an officer of justice in the execution of his duty, or any private person endeavouring to suppress an affray, is counted a malicious homicide, and therefore murder. So where a man in the act of attempting or committing any felony, undesignedly kills another, the presumption of malice is incontrovertible. It is clear enough that if A., intending deliberately to shoot B., misses his aim and kills another person, or if he place poison for B., which somebody else drinks, he can have but little to say for himself. But when the felony was not one intended to endanger life the rule is a severe one, and would have been relaxed by the proposed Criminal Code. Again, where two or more persons join in any unlawful act against the peace, of which the probable consequence may be bloodshed, as, for instance, to beat a man or create a riot, and one of them happens to kill anybody, this is murder in them all, because of the *mala prægogitata*, or evil intended beforehand.

Finally, a criminal killing may be direct, as by striking, starving, or poisoning; or it may be by the doing of some act which was intended to result in death or bodily injury, and of which death was actually the result; or it may be by some act of which the accused must be taken to have foreseen that the death which occurred was among the probable or possible consequences. Death, however, must have taken place within a year and a day from the date of the act in order to render the person charged with it accountable.

It is a rule laid down by Sir Matthew Hale and approved by Blackstone, never to convict a person of murder or manslaughter unless the body be found. In the recent Richmond murder case, the question whether the body *had* been found was among those left to the jury.

With this brief review of main principles we must be content. To follow them through their wide application would lead us far beyond the limits and purpose of a Note. We may notice, in conclusion, that the words 'reasonable creature *in being*,' which form part of the definition of murder, exclude the case of a child destroyed before actually born into the world in a living state (see CONCEALMENT OF BIRTH). Also that the words 'under the Queen's peace' simply disprotect an alien enemy encountered in lawful war. It matters not where a murder or manslaughter committed on land abroad may have taken place, nor who may have been the victim, provided only that the offence were committed by a subject of Her Majesty, and that he can be brought to trial in England; 24-5 Vict. c. 100, s. 9, and see page 25. As regards offences committed on board ship, see title HIGH SEAS.

Neither murder nor manslaughter are triable elsewhere than at the Assizes. Bail is in either case 'discretionary,' but of course is never accepted upon charges of murder.

The death-penalty of the latter offence is now carried out in private, under the 31 Vict. c. 24.

The punishment of manslaughter ranges from a nominal fine up to penal servitude for life.

The **attempt to murder** is punishable in every case by penal servitude from five years to life; or imprisonment not exceeding two years (24-5 Vict. c. 100, secs. 11-15). It is no longer a capital offence to arrange a 'nitro-glycerine clock' in a steamer's hold for the purpose of sinking her in mid-ocean, or to strew dynamite in front of an express train. We are too humane to deal with such devilry upon the gallows, should any accident avert the intended massacre. Trial and bail for attempts as in the case of actual murder. Of course, from the nature of the case, there can be no *attempt* to commit manslaughter, nor any accomplice in the offence.

Under the Act just cited, sec. 4, 'all persons who shall conspire, confederate, and agree to murder any person,

whether he be a subject of Her Majesty or not—and whether he be within the Queen's dominions or not—and whosoever shall solicit, encourage or persuade, or endeavour to persuade, or who shall propose to any person, to murder any other person, whether he be, &c., shall be guilty of a misdemeanour.' [Pen. Serv. 5—10 years, or impr. 2 y.] See *R. v. Most*, June, 1881, 7 Q. B. D. 244.

MUSIC AND DANCING. Under the 25 Geo. II. c. 36, any person keeping a place for public dancing, music, or other public entertainment of a like kind, without a licence from Justices in Quarter Sessions, and within the metropolis or twenty miles thereof, is liable to indictment as the keeper of a disorderly house, and to forfeit £100 to such person as will sue for the same. There must, however, be an habitual 'keeping.' A single entertainment, or the occasional use of a room for the above purposes, will not justify a conviction. The proprietor of a musical skating-rink was indicted at the Surrey Sessions not very long ago. The jury found him not guilty of music, but guilty of dancing; *i.e.*, that music was not music, but that rinking was dancing. The court of C. C. R. considered that there had been an infraction of the Act. *R. v. Tucker*, Ap. 28, 1877; 41 J. P. 294.

NUISANCE. Any individual suffering from a private nuisance—that is to say, something which unlawfully annoys or does him damage in the enjoyment of his life or property—has a perfect right at Common Law to abate it at once, if he can. He may walk into his neighbour's grounds for that purpose without being in any sense an aggressor; but he must not make a forcible entry, or intentionally provoke a breach of the peace. Similarly, if a gate be hung across a highway, any person passing along upon his own business may demolish it then and there (a). This kind of redress, or

(a) But 'if there be a nuisance in a public highway, a private individual cannot of his own authority abate it unless it does him a special injury,

summary jurisdiction in its most primitive form, is permitted, says Blackstone, because injuries or annoyances in respect of things of daily convenience and use require an immediate remedy, and cannot await the forms of ordinary justice.

But any inconvenient and troublesome proceeding which injures, annoys, or alarms the community at large is to be dealt with not as matter of personal redress or private suit, but as an indictable nuisance and misdemeanour. Offensive or dangerous trades, insecure keeping of savage animals, indecent behaviour, collecting needless crowds or otherwise obstructing the public road, interfering with the enjoyment of common ground, and fifty other things, are all indictable as nuisances. A person may be a nuisance, as well as a thing. Paul Pry was a public nuisance, and liable to be set under sureties not to hearken. And village scolds, as we all know, were in former days corrected with diabolical ingenuity.

See PUBLIC HEALTH ACT, titles *Nuisance, Offensive Trades, &c.* (pages 383, 384); and, as to street nuisances, POLICE OF TOWNS, 3, 4 : see also HIGHWAYS, page 244.

OATHS. [See EVIDENCE, page 179]. Any Justice, or other person, administering an oath when not authorised by law is guilty of a misdemeanour and liable to fine or imprisonment, 5 & 6 Will. IV. c. 62, s. 13. Administering any oath to commit a capital felony is punishable with penal servitude for life; and administering, or being present at the administration of, or voluntarily taking any oath to disturb the public peace, or to engage in seditious practices, exposes

and he can only interfere with it so far as is necessary to exercise his right of passing along the highway. And, without considering whether he must show that the abatement of the nuisance was absolutely necessary to enable him to pass, he cannot justify doing any damage to the property of the person who has improperly placed the nuisance in the highway, if by avoiding it he might have passed on with reasonable convenience': per Lord Campbell, C. J., *Dimes v. Petley*, 15 Q. B. 283.

the offender to the like punishment for not less than five nor more than seven years.

Justices are frequently called upon to take declarations in lieu of oath under the 5 & 6 Will. IV. c. 62. By sec. 18, they are authorised to take the voluntary declaration of any person which may be *necessary or proper for the confirmation of written instruments, &c., or other matters*. The last words must not be taken as signifying that a declaration upon any conceivable subject ought to be received. The rule at the Mansion House, stated by Mr. Oke (Syn. 12 Ed., p. 1416) is that 'declarations will not be taken respecting immoral practices, or involving criminal charges, or in any other improper case.' Quacks, for instance, constantly offer to make statutory declaration with regard to their nostrums. There is an official flavour about a document headed with the royal arms, and countersigned by a Justice, which is said to be particularly captivating in the colonies. Any person making a declaration under the above Act, knowing the same to be untrue in any material particular, is guilty of a misdemeanour. As regards profane oaths, see SWEARING.

OBSCENE BOOKS, &c. Any two Justices or stipendiary magistrate, upon complaint on oath that any obscene books, prints, &c., are kept in any house or shop within their jurisdiction for the purpose of sale or distribution, or exhibition for the purposes of gain, and that one or more of such books, &c., has been sold or exhibited, and being satisfied that any of such articles are *of such a character that their publication would be a misdemeanour*, may by special warrant direct any constable to enter such house, &c., by force, if necessary, and seize all such articles. The occupier may thereupon be summoned to appear within seven days, and show cause why such books, &c., should not be destroyed. Power is given, in case the books, &c., should prove to be of the above character, and to be kept for the above purpose, to order their destruction at the expiration of seven days from

the date of the order, unless notice of appeal be previously given; the articles in the meantime to be impounded (20-1 Vict. c. 83).

In the case of that celebrated production, the 'Fruits of Philosophy,' Mr. Vaughan made an order at Bow Street for the destruction of the entire edition *en bloc*. But he unfortunately contented himself with reciting that the book was obscene, without finding that its publication would have been a misdemeanour; and the order was quashed accordingly, as defective in matter of substance. *R. v. Bradlaugh*, Q. B., Nov. 9, 1878, 47 L. J. M. C. 105; 43 J. P. 125. See INDECENCY.

OLD METAL DEALERS. Under the 'Old Metal Dealers Act, 1861' (24-5 Vict. c. 110), the term 'dealer in old metals' is defined to mean 'any person dealing in, buying, and selling old metal, scrap-metal, broken metal, or partly-manufactured metal goods, or defaced or old metal goods, whether such person deals in such articles only, or together with second-hand goods, or marine stores; and the term "old metal" shall mean the said articles' (sec. 3). No such dealer may purchase, at any one time, less than 112 lb. of lead, or 56 lb. of copper, brass, pewter, &c., under a penalty of £5 (34-5 Vict. c. 112, s. 13).

Any Justice, upon complaint on oath that any 'old metal,' unlawfully obtained, is kept in any place by any dealer, within his jurisdiction, may authorise a constable, by special warrant, to enter, in the day-time, and seize *all old metals there found*, and may thereupon summon the dealer before two Justices; and in case such dealer fail to prove to their satisfaction how he came by the articles, or if he be found in possession of any old metal stolen or unlawfully obtained, and the Justices are satisfied that he had reasonable cause to believe it to have been stolen, &c., he is liable, for a first offence, to a penalty of £5 (afterwards £20), or, at their discretion, to three months' hard labour, or may be indicted

as a receiver (24-5 Vict. c. 110, s. 4). Any dealer in old metals, upon conviction as above, may be ordered to be placed upon the register of the principal police-office of the division, and must thereupon, for three years afterwards, conform to certain strict regulations in conducting his business.

Penalties, &c., are recoverable before two Justices by distress. Any part of a penalty may be applied in compensation. Appeal to Gen. or Q. Sess. (see p. 73) from summary conviction under sec. 4, or where over £5 is adjudged to be paid.

ORDERS UPON COMPLAINT. See Preliminary Notes, Chapter VI.; and as to the power of enforcing orders, other than for the payment of money, under any *future* Act, see Summary Jurisdiction Act, sec. 34.

PAWNBROKERS. Since the passing of the 'Pawnbrokers Act, 1872' (35-6 Vict. c. 93), no person, not at that time in the business, can obtain a pawnbroker's Excise (annual) licence except upon a certificate granted either by a stipendiary magistrate or Justices in petty sessions specially convened for that purpose (secs. 37, *et seq.*).

In order to prevent evasion of the Act, it is provided (sec. 6) that every person who keeps a shop for the purchase or sale of goods, or for taking in goods by way of security for money advanced, and who purchases or receives goods and pays or lends thereon any sum *not exceeding* £10 on the understanding, whether express or implied, that such goods may be afterwards redeemed or repurchased *on any terms* is to be deemed a pawnbroker. The Act *does not apply to loans over* £10; and no person is to be deemed a pawnbroker by reason only of his lending, upon any terms, sums above £10.

Servant of Pawnbroker.—Anything done or omitted by the servant, apprentice, or agent of any pawnbroker in the course of business is to be deemed to be done or omitted by the pawnbroker himself (sec. 8).

Interest.—Pawnbrokers are entitled to make the following charges in respect of loans, viz. :—When a loan does not exceed 40*s.*, $\frac{1}{2}$ *d.* per month on every 2*s.* or fraction of 2*s.* Half a month's charge if pledge redeemed within the first 14 days of any month, except the first. When a loan exceeds 40*s.*, $\frac{1}{2}$ *d.* per month, or part of a month, upon every 2*s.* 6*d.* or fraction of 2*s.* 6*d.* Charge for pawn-ticket, $\frac{1}{2}$ *d.*, if loan under 10*s.*, 1*d.* if above. Upon loans between 40*s.* and £10, the parties may, if they please, make their own bargain, to be specified in a special ticket (sec. 24).

Pledges and Pawn-tickets.—All pledges are redeemable within 12 months and 7 days. A pledge for 10*s.* or under, if not so redeemed is absolutely forfeited. Pledges over 10*s.* must be sold by public auction ; and the pawnbroker is bound at any time within 3 years to account, upon demand, for the surplus. The holder of the pawn-ticket is to be presumed to be the person entitled to redeem, and the pawnbroker is, under section 25, indemnified (as against the pawner) in delivering up the pledge accordingly. But this section does not protect him against the claim of an owner, whose property has been pledged against his will, and who claims by title paramount to that of the pawner : *Singer Company v. Clarke*, Nov. 30, 1879, 5 Exch. D. 37 ; 44 J. P. 59. Provision is made in case of the loss or damage of the pledge by fire or negligence, or the loss of the pawn-ticket (a), (secs. 16--29).

Property Unlawfully Pawned.—If any person be summarily convicted of pawning the property of another without

(a) In this case a declaration (furnished by the pawnbroker) must be made before a Justice, stating that the ticket has been lost, &c. Possibly we are more careless at Brentford than elsewhere ; but at least 150 applications are annually made in court by people in this predicament. According to a Parliamentary paper, issued in 1881, the number of pawnbrokers and their assistants who during the preceding year attended at the various metropolitan police courts and sessions, in connection with charges of unlawful pawning, &c., was no less than 2065.

his authority; or is convicted, in any court, of feloniously taking or fraudulently obtaining goods pawned with a pawnbroker; or if it appear to a Court of Summary Jurisdiction that any goods brought before the court have been unlawfully pawned, the court, on proof of ownership, may order the delivery thereof to the owner, either on payment to the pawnbroker of the loan or any part thereof, or without such payment, as, *according to the conduct of the owner* and other circumstances, may seem just (sec. 30). And see, within the Metropolitan Police District, 2 & 3 Vict. c. 71, ss. 27, 28. See also PAWNING (UNLAWFUL).

Search Warrant.—The owner of any goods which have been unlawfully obtained or taken from him, and which he has good reason to suspect have been taken in pawn, may apply to a Justice for a search warrant. Such goods, if found, are to be forthwith restored to the owner (sec. 36).

In these days, when every servant girl is at least as smart as her mistress, pawnbrokers are occasionally misled into taking stolen dresses, &c., in pledge, which in former times would have excited instant suspicion. When a man bears a good character for assisting the police, he should be leniently dealt with for an error of judgment. Pawnbrokers, as a rule, carry on their peculiar business with great integrity. One would fancy indeed, considering the *chevaux-de-frise* of penalties which beset them in all directions, that they ought to be the last people in the world knowingly to run tremendous risk for the sake of an utterly disproportionate gain. Even a dishonest pawnbroker might well be deterred from so doing by exactly the same considerations which keep a black-leg from revoking.

Right to Detain Customer, &c.—In return for the above liabilities, the pawnbroker may detain any person guilty of any of the offences marked (14) below, as well as any article, and person offering in pawn any article which he reasonably suspects to have been stolen, &c., and deliver the latter to a constable, to be conveyed before a Justice, who may order com-

pensation to the pawnbroker for his trouble and loss of time (sec. 34). His order will have the same effect as if made under the 7 Geo. IV. c. 64 (see Costs), and is useful where the pawnbroker has rendered assistance in this manner, and there is no other source of recompense for his good offices.

The following among other offences are cognisable by *one* Justice. See, however, SUMMARY JURISDICTION (4). On frivolous informations, Justices may order amends not exceeding £5 to be paid by the informer (sec. 47). The destination of penalties, which are in every case recoverable by distress, is sometimes to the party aggrieved—sometimes to the poor of the parish—sometimes to the county treasurer. Appeal to Gen. or Quarter Sessions (see page 73).

OFFENCES BY PAWNBROKERS.

1. (Sec. 37). Acting without licence. Excise penalty [£50].
 2. (Sec. 12). Not keeping proper books, &c. [£10].
 3. (Sec. 13). Not keeping name over door [*ib.*].
 4. (Sec. 14). Not giving pawn-ticket for a pledge [*ib.*].
 5. (Sec. 15). Taking too great a profit [*ib.*].
 6. (Sec. 31). Not delivering pledge to person entitled [*ib.*].
 7. (Sec. 32). Taking pledge from person appearing to be under 12, or to be intoxicated [*ib.*].
- No pawnbroker may take a pledge from a person under 16 within the Metropolitan Police District, 2 & 3 Vict. c. 47, s. 50.
8. (*ib.*). Purchasing, &c., ticket of another pawnbroker [*ib.*].
 9. (*ib.*). Purchasing, or bargaining for, pledge in pawn [*ib.*].
 10. (*ib.*). Selling pledge, except as authorised [*ib.*].
 11. (Sec. 35). Knowingly taking in pawn any linen, apparel, or unfinished goods, or materials entrusted to

any person to wash, iron, mend or make up [forfeit double the amount of loan, and restore pledge].

12. (Sec. 50). Not attending a Court of Summary Jurisdiction, with books, &c., when ordered so to do [£20].

OFFENCES BY OTHER PERSONS.

13. (Sec. 33). Pawning goods without authority [forfeit £5, and value of goods].
14. (Sec. 34). Offering article in pawn and refusing to give a satisfactory account of its possession—or giving false information as to its ownership, or the name of the owner, or the offerer's own name—or wrongfully attempting to redeem any pledge [£10].

PAWNING (UNLAWFUL). This, as we have just seen (*supra*, Offence 13), is punishable with a fine not exceeding £5, in addition to the value of the goods pledged. But here we proceed upon the assumption that the act did not amount in law to larceny. If A. take the goods of B. with the intention of pawning them, or if, being entrusted with the goods of B., he resolves to pawn them, the question whether such pawning is larceny or not, depends upon the consideration whether he intended thereby to deprive B. permanently of his property, or merely pledged it with an intention and reasonable prospect of redeeming it afterwards. In the former case he is guilty of the felony; in the latter he has only taken the extreme liberty of borrowing the article in order to raise money upon it, and may be dealt with as an unlawful pawner. In *R. v. Medland*, 5 Cox C. C. 292, which was a case of pawning from ready furnished lodgings, it was held by the Recorder, with the concurrence of Coleridge, J., and Mr. Baron Platt, that the fact that the prisoner had frequently pawned, and afterwards redeemed, portions of the same property, was no answer to the charge of larceny. There must not only be the intent but an apparent ability to redeem the goods, to render such a defence available.

It is not unusual in cases of petty theft, where the property stolen, as frequently happens, is carried at once to the pawn-broker, to take a merciful view of the matter, and convict the prisoner under the above section. But this can only be properly done when there appears to be some probability, however distant, that he or she intended to redeem the pledge.

The penalty in cases of unlawful pawning is to be applied towards making satisfaction to the party injured, and defraying the costs of the prosecution, as the court may direct: see pages 333 and 336 (13).

PEDLAR. This word is explained by Johnson to be the contraction of 'petty dealer,' a derivation both ingenious and improbable. Familiar phrases alone furnish matter for such formations, and it is unlikely that the pedlar, or foot-hawker, was ever known as 'the petty dealer' among his customers. At any rate the term, as defined by the 34-5 Vict. c. 96, s. 3, includes 'any hawker, petty chapman, tinker, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels or trades *on foot*, and goes from town to town, or to other men's houses, carrying to sell, or exposing for sale, any goods, wares, or merchandise, or procuring orders for goods, &c., to be *immediately* delivered, or offering for sale *his skill in handicraft*.' Commercial travellers, and persons seeking orders for goods from the dealers, or for books under written authority from the publishers, as well as sellers of vegetables, fish, fruit, or 'victuals' (*i.e.*, anything which constitutes an ingredient in the food of man, *R. v. Hodgkinson*, 10 B. & C. 74), and market-people, are not within the Act.

No person may act as a pedlar without a yearly certificate (fee 5s.) from the chief officer of the police district in which he resides at the time. This document, which was formerly only effectual within that particular district, unless indorsed for another by the chief of its police, is now by the 'Pedlars'

Act, 1881,' (44-5 Vict. c. 45) of force throughout the United Kingdom. It constitutes the recipient a 'licenced hawker' for the purpose of the 'Markets and Fairs Clauses Act, 1847.' In return for his privileges, the pedlar is bound not to assign or lend his certificate, and to show it, upon demand, to any Justice, constable, or person to whom he offers his wares for sale, or upon whose private premises he may be found; and he is not to prevent any constable from opening and inspecting his pack. If a pedlar be convicted of any offence *under this Act*, the court *must indorse* upon his certificate a record thereof (sec. 14), and 'any court before which a pedlar is convicted of any offence, *whether under this or any other Act*, or otherwise, *may*, if he or they think fit, deprive such pedlar of his certificate; and any such court *shall* deprive such pedlar of his certificate if he is convicted of begging' (sec. 16). Moreover, when a person acting as a pedlar has no certificate, or refuses to produce it, or resists inspection of his pack, any person authorised, as above, to demand production of the certificate, and any person acting in his aid, may apprehend the offender and bring him before a Justice (sec. 18).

One of the leading objects of the Act was to prevent the professional tramp from assuming the social status of the professional tinker, thus passing himself off to the police as a man with a calling. In order to prevent advantage being thus taken of it, or *vice versâ*, it is provided that no person shall be exempt from the operation of the Vagrant Law by reason merely that he holds a pedlar's certificate (sec. 13); and that the certificate of any pedlar may be taken away, upon summons, if he fail to satisfy the Justices that he is in good faith acting as such (sec. 16).

The following offences may be dealt with by two Justices. Penalties recoverable by distress. No appeal.

1. (Sec. 4). Acting as pedlar without valid certificate [10s.].
2. (Sec. 10). Lending or borrowing certificate [20s.].

3. (Sec. 17). Refusing to produce certificate [5s.].

4. (Sec. 19). Refusing to open pack [20s.].

See HAWKERS.

PERJURY. This is strictly a crime against public justice, and consists in wilfully, absolutely, and falsely swearing, in the course of a judicial proceeding, to some fact which is *material to the issue* or point in question. Even where an oath is exacted by Act of Parliament, otherwise than in a proceeding of the above kind, the breach of it does not amount to perjury, without express provision to that effect.

Any Justice, in petty or special sessions, where it appears that any person has been guilty of wilful perjury in any evidence given, or in any deposition or other proceedings before them, may direct such person to be prosecuted for the misdemeanour, and commit him, in default of bail, until the next assizes, requiring any person whom they may think fit to enter into recognisances to prosecute or give evidence against him (14 & 15 Vict. c. 100, s. 19). No depositions are requisite when a prosecution is thus directed. Of course a man may be committed for perjury, as for any other indictable offence, in the usual manner.

Upon every indictment for perjury, there must be averments from which the court can gather what the issue between the parties actually was, and judge whether the statement alleged to have been false was material or otherwise: *R. v. Scott*, C. C. R. April 21, 1877, 41 J. P. 391. Two witnesses are required to convict; or one, where there is confirmatory evidence.

We stated at the outset that the swearing upon which perjury can be assigned must be in the course of 'a judicial proceeding.' A policeman some time since obtained an informal warrant, unsupported by information upon oath, against a man for an alleged assault. He sustained the charge by his own false evidence, and the accused was convicted and sentenced to six months' imprisonment. The policeman was subsequently indicted for perjury, and

convicted in his turn. Against this conviction it was contended before the C. C. R. that the summary proceedings were irregular and without jurisdiction—*i.e.*, were not 'judicial' at all—there having been no information on oath before the warrant was issued; and that, consequently, no 'perjury' could have been committed. The principle of the objection was conceded; but it was answered that it was immaterial how the original prisoner came before the Justices, provided they had jurisdiction over the *matter* in respect of time and place. Being thus competent, a false oath wilfully taken, in respect of anything material, would be perjury: *R. v. Hughes*, June, 1879, 48 L. J. M. C. 151; 4 Q. B. D. 614.

Perjury is not triable at Sessions. It is punishable with penal servitude for from 5 to 7 years, or with imprisonment and hard labour for not exceeding *seven* years.

PETROLEUM. Under the 34-5 Vict. c. 105, the term 'petroleum' includes any rock-oil, Rangoon oil, Burmah oil, oil made from petroleum or other bituminous substance, and any products of petroleum or other of the above oils. The petroleum to which the Act originally applied was such as, when tested in a particular manner, flashed at a point below 100° Fahrenheit. This test has been abolished by the Petroleum Act, 1879 (42-3 Vict. c. 47), and petroleum is not now within the Act unless it gives off inflammable vapour at a temperature below 73° Fahrenheit, when tried as prescribed by the more recent enactment.

No such petroleum may be kept, either for sale or private use, except under licence from the Local Authority, unless the quantity kept be under 3 gallons, and contained in separate glass, earthenware, or metal vessels, securely stoppered, and not holding more than a pint a-piece.

The Local Authority for the above purpose is the Metropolitan Board of Works within its jurisdiction (not including the City); the Court of the Lord Mayor, &c., in the City; the

Council of a borough ; improvement commissioners within their jurisdiction (not comprising any part of a borough) ; and elsewhere, in any place within the jurisdiction of a Local Board constituted under the Local Government Act, 1858, such Local Board. In harbours (for definition, see sec. 2), the Harbour Authorities, if any, have exclusive powers. In default of some such local authority, Justices in petty sessions are to act.

Licences may be granted (sec. 9) for a limited time, 'and there may be annexed to such licence such conditions as to the mode of storage, the nature and situation of the premises in which, and the nature of the goods with which petroleum . . . is to be stored . . . and generally as to the safe keeping of such petroleum as may seem expedient.' Any licensee violating any condition is to be deemed an unlicensed person, 'and all petroleum kept in contravention of this section [*i.e.*, except under licence] shall, together with the vessel containing the same, be forfeited ; and, in addition thereto, the occupier of the place in which such petroleum is kept shall be liable to a penalty not exceeding £20 a-day for each day during which such petroleum is kept.'

It will be noticed that the Act does not specify, among the above 'conditions,' any restriction either upon the quantity or the quality of the petroleum authorised to be kept. The Government Authorities, however, consider such to be implied, as matter of 'safe keeping.' Practically, a limit is always imposed, and frequently in respect of some particular petroleum. A dealer licenced to keep 40 gallons, including not more than 10 of benzoline, was considerably fined, not long since, for keeping 12 gallons of the latter, although his entire stock was far within the limit of 40 gallons.

By sec. 6, when any petroleum is kept at any place, except during seven days next after importation, or conveyed by land or water between any two places in the United Kingdom, or sold or exposed for sale, the vessel containing it must bear a label, in conspicuous characters, stating the de-

scription of the petroleum, and containing the words *Highly Inflammable*, with the addition of the name and address of the consignee or owner, and, in the case of a vessel sent for conveyance, of the name and address of the sender. By sec. 11, provision is made for enabling the officer of the Local Authority to test any petroleum in the possession of any dealer. And, by sec. 13, any Court of Summary Jurisdiction may grant a search warrant for petroleum kept, conveyed, or exposed for sale within their jurisdiction, in contravention of the Act.

Hawking Petroleum.—Under the ‘Petroleum (Hawkers) Acts, 1881,’ 44-5 Vict. c. 67, any person licenced as above to keep petroleum may hawk it, either by himself or his servants. This privilege is subject to the general law with respect to hawkers and pedlars, and to certain special regulations. The quantity conveyed in any one vehicle must not exceed 20 gallons ; the whole category of precautions required by section 2 must be observed ; and ‘every person concerned in hawking petroleum must abstain from any act which tends to cause fire or explosion, and is not reasonably necessary for the purpose of such hawking.’

Any contravention of the above may be punished by forfeiture of the petroleum as well as of the vessels containing it and the vehicle in which it is conveyed ; ‘and in addition thereto the licensee, by whom or by whose servants the petroleum was being hawked, shall be liable on summary conviction to a penalty not exceeding £20.’

Provision is made for cases in which some servant of the licensee, or other person, may have been the real culprit ; and (sec. 4) authority is given to seize and detain petroleum on the road, where there is reason to believe that a contravention of the Act is being committed. Municipal Boroughs, under sec. 5, may forbid the petroleum hawker to pursue his traffic within their limits.

Finally, a person is to be deemed to hawk petroleum if by himself or his servant he carries it for sale, whether with or

without horse or other beast ; and any petroleum *other than that to which the principal Act applies*, while in any vehicle used for the hawking of such last mentioned petroleum, is to be deemed, so far as regards the special regulations above referred to, to be petroleum within the Act.

All offences under the Petroleum Acts are cognisable before two Justices ; but no penalty imposed by a Court of Summary Jurisdiction is to exceed £50. Penalties are recoverable by distress. Forfeitures may be sold or disposed of as the court shall direct. Proceeds to go as fines (S. J. Act, 1879, sec. 39 (5), and S. J. Act, 1884). No appeal.

OFFENCES.

1. (Sec. 4). 'Ship' or cargo moored, landed, &c., in contravention of 'harbour' bye-law. Master of ship, and owner of ship or cargo, each [£50 per day during contravention].

N.B.—The word 'ship' includes every navigable vessel, whether propelled by oars or otherwise.

2. (Sec. 5). Owner and master of any ship entering harbour not giving notice of petroleum on board, each [£500].
3. (Sec. 6). Contravention of this section—see page 341 [£5, and petroleum and vessels containing it to be forfeited].
4. (Sec. 7). Occupation of a place in which petroleum is kept, except in pursuance of a licence given by the Local Authority [£20 per day, and forfeiture as above].
5. (Sec. 12). Refusing to show place or vessels in which petroleum is kept to officer of Local Authority, or to assist him in examining same, or to give him samples on payment, or obstructing him in execution of the Act [£20].
6. (Sec. 13). Refusing admission to or obstructing person acting under search warrant—see above—[£20, and forfeit all petroleum found].

POISON. As regards the administration of poison with the actual intention of destroying human life, see 'attempt to murder,' *antè*, page 327. Under the 24-5 Vict. c. 100, s. 23, whoever shall maliciously administer or cause to be administered to any person any poison, or other noxious thing, so as to endanger life, or do grievous bodily harm, is guilty of felony [Pen. S. 5—10 y. ; or impr. 2 y.].

(Sec. 24.) If the act be done, or caused, with intent to injure or annoy, Misd. [Pen. S. 5 y. ; or impr. 2 y.].

Triable at Sessions. Bail 'discretionary.'

Poison, Sale of.—No person other than a duly registered chemist, &c., may keep open shop for the retail sale of poisons under a penalty of £5, recoverable in manner provided by the Pharmacy Act: see 31-2 Vict. c. 121, and 32-3 Vict. c. 117. Under the provisions of the former (sec. 17):—

1. No person may sell any poison unless the box, bottle, or wrapper be labelled with the name of the article, the word 'Poison,' and the *seller's* name and address; see *Templeman v. Trafford*, 51 L. J. M. C. 4;
2. Nor sell any of the poisons enumerated in schedule A. (Part I.) of the Act (including arsenic, prussic acid, tartar emetic, corrosive sublimate, &c.), to any person unknown to him, unless properly introduced;
3. Nor omit to enter, *before delivery*, the nature and quantity of the drug, date of sale, purpose for which wanted, and name of purchaser, such entry to be signed by the latter. Penalty £5.

Certain exceptions are made in the case of medicines regularly dispensed, or supplied by qualified medical practitioners to their patients. See *Berry v. Henderson*, 22 L. T. N. S. 331, and **ARSENIC**, the rules as to which are not affected by the above. 'Patent Medicines,' *i.e.*, preparations bearing the Government stamp, may be retailed by anybody who cares to invest in a 5s. licence for the purpose. No precautions expected. Chlorodyne and chloral may be obtained at the grocer's as easily as coffee.

Poisoned Grain, &c.—Any person who shall offer for sale or sell any poisoned grain, seed, or meal, and any person who shall wilfully sow, cast, or place such grain, &c., into or upon any ground whatever, or other exposed situation, is liable to a penalty of £10 (26-7 Vict. c. 113). The Act, however, permits the use of any (poisonous) ingredient for dressing or protecting any grain or seed for *bonâ fide* use in agriculture, as well as the sale and sowing of grain or seed so prepared (sec. 4). Of course, this exemption does not apply to the case of meal. The Act does not forbid the use of any of these poisonous articles inside a dwelling-house or barn. The result is, that a tradesmen cannot sell poisoned meal under any circumstances, and if the purchaser require poisoned grain for killing rats in his cellar, which is not a *bonâ fide* agricultural purpose, he has no right to be supplied.

Poisoned Flesh.—Under a later Act (27-8 Vict. c. 115), any person who shall wilfully set or place *in or upon any land* any poisoned flesh or meat is liable to a penalty of £10. The occupier, however, of any dwelling-house or other building, and the owner of any rick, stack, or cultivated vegetable produce, may place any poison in such dwelling-house, &c., or in any *enclosed* garden attached, or in the house-drains (if dogs be fenced out), or within a rick or stack, for the destruction of small vermin.

A man who had been annoyed by a neighbour's dog straying into his garden, which was not effectually 'enclosed,' gave the owner notice that he would place poisoned meat there. He was as good as his word. The dog ate and died. It appears that he was guilty of an offence under the above Act, although not under the Malicious Injuries Act (see title, Offence 6); *Daniel v. Janes*, C. P. May 2, 1877, 41 J. P. 712.

All the above offences may be dealt with by two Justices. Penalties recoverable by distress. No appeal.

Poisoning Freshwater Fish is punishable before two Justices by a fine of £20, or two months peremptory hard labour (47-8 Vict. c. 11, sec. 7).

POLICE OF TOWNS. The 'Towns' Police Clauses Act' (10 & 11 Vict. c. 89), was originally designed as a set of standard or model police rules, consolidated for incorporation with special Acts having reference to particular towns or districts, so as to secure some degree of uniformity in this particular. A higher destiny awaited it. Under the Public Health Act, 1875 (page 388), the greater part of its provisions were fused with that important measure, and are now in force in every 'Urban District' throughout England and Wales. These latter provisions are given below in a condensed form, but without the omission of any declared offence. They were borrowed from an earlier Act, the 2 & 3 Vict. c. 47, which is still operative within the Metropolitan Police District. A few of these, which were not copied in the more general enactment, will be found below at paragraph 9. The word 'street' in the following clauses is defined to include any road, square, court, alley, and thoroughfare, or public passage.

When the Towns' Police Act is in force *as part of the Public Health Act*, 'any constable or officer of police acting for or in the district of the Urban Authority' has all the powers assigned to a constable in the Towns' Police Act (Public Health Act, sec. 171), and may act accordingly. But, except as expressly provided, proceedings for the recovery of any penalty cannot be taken 'by any person *other than by a party aggrieved*, or by the Local Authority of the district in which the offence is committed, without the consent in writing of the Attorney-General' (page 379).

Two Justices, upon the above supposition, are required to deal with the offences in paragraphs 3 and 4. Otherwise, under the Towns' Police Act itself, one Justice is competent to adjudicate.

1. Obstructions in Streets. (Sec. 22).—The Local Authority may make orders as to route to be observed by carriages, &c., on public occasions, during divine service, &c., and for preventing obstructions near theatres, &c.

2. Impounding Stray Cattle. (Sec. 24).—See CATTLE STRAYING.

3. Street Nuisances.—‘Every person who, in any street, to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences’ is liable (sec. 28) to a penalty not exceeding 40s., recoverable by distress, or may be committed for not exceeding 14 days. (There is no power to award hard labour, either on non-payment of the penalty or on summary imprisonment.) And any constable or other officer appointed under this or the Public Health Act *shall* take into custody without warrant any person who, within his view, commits any of such offences, viz., who exposes for show, hire, or sale (except in market, market-place, or fair) any horse or other animal, or exhibits any caravan-show, &c., or shoes, bleeds, breaks, or turns loose any horse or animal; or repairs any carriage, &c., except in case of accident; or who slaughters any cattle, except, &c.; or who [see DOGS, and DRIVING AND RIDING]; or who causes any public carriage, sledge, truck, or barrow, with or without horses, to stand longer than necessary for loading or unloading, &c.; or by means of any cart, carriage, barrow, &c., or other means, wilfully interrupts any public crossing, or obstructs any public footpath or thoroughfare; or who causes any tree, timber, &c., to be drawn upon any carriage without means of safely guiding the same; or leads or rides any horse, &c., or draws or drives any cart, carriage, barrow, &c., upon any footway, or fastens any horse, &c., so that it stands upon same; or who places or leaves any wares or merchandise, or any cask, basket, bucket, &c., or places or uses any standing-place, bench, stool, stall, or show-board on any footway; or places any blind, or awning or other projection over such footway, unless eight feet from the ground; or places or hangs up, or otherwise exposes for sale, any goods, wares or other matters, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to

obstruct or incommode the passage along such footway; or rolls or carries any cask, hoop, or wheel, or any ladder, plank or pole upon any footway, except in loading cart, &c., or in crossing the footway; or places any line or pole across a street, or hangs any clothes thereon.

4.—Or common prostitute, who loiters and importunes; or whoever wilfully and indecently exposes his person; or publicly exhibits for sale, or otherwise, any indecent book, drawing, &c., or sings any profane or obscene song, or uses any profane or obscene language, or wantonly discharges any firearm, or [see FIREWORKS]; or throws any stone, &c., or makes any bonfire, or wantonly disturbs any inhabitant by ringing any door-bell or knocking at any door, or unlawfully extinguishes any lamp, or flies any kite, or makes or uses any slide upon ice, &c., or cleans or scalds any cask, &c., or saws or cuts any timber or stone, or screens any lime, or throws or lays down any stones, coals, bricks, &c. (except building materials properly enclosed), or beats or shakes any carpet, mat, &c. (except door-mats before 8 a.m.), or places any flower-pot, &c., in any window so as to be liable to be blown down, or throws anything from any building (except snow thrown so as not to fall on passengers), or permits any person to stand upon the sill of any upper window; or leaves open any cellar, &c., without sufficient fence, or with defective covering; or does not sufficiently fence any area, pit, &c., left open, or leaves the same without a sufficient light after sunset; or throws or lays any litter, or ashes, offal, or rubbish, on any street (but it is not an offence to lay sand, &c., in time of frost, or litter to prevent water in pipes from freezing, or, in case of sickness, to prevent noise, if removed when the occasion ceases); or causes any offensive matter to run from any manufactory, brewery, slaughter-house, dunghill, &c., into any street; or keeps any pigstye not sufficiently shut out from the street, or any swine in or near such street, so as to be a common nuisance.

5. **Persons Drunk and Riotous.**—See DRUNKENNESS.

6. **Chimneys on Fire.**—Every person who wilfully sets

fire to any chimney is liable to a penalty of £5. The occupier of premises in which any chimney accidentally takes fire is liable to a penalty of 10s., unless he show that such fire was not owing to the neglect or carelessness of himself or his servant (sec. 31).

7. Places of Public Resort (sec. 35).—Every person keeping any place of public resort [including a public-house] for the sale or consumption of refreshments of any kind, who knowingly suffers common prostitutes or reputed thieves to assemble and continue therein is liable to a penalty not exceeding £5. And every person who keeps or uses any house, room, pit, &c., for the purpose of fighting, baiting, or worrying animals, is liable to the same penalty, or to imprisonment, with or without hard labour, for not exceeding one month. Each person present, without lawful excuse, 5s.

8. Hackney Carriages.—The Act contains various provisions with respect to the licencing and hire of these vehicles, which it is not necessary to insert: see HACKNEY CARRIAGES.

9.—The following are offences in any thoroughfare or public place within the Metropolitan Police District under the Act referred to at page 346. The alternative of non-payment of any penalty is one month (sec. 77):—

(Sec. 54). Every person who by negligence or ill-usage in driving cattle causes any mischief, &c. [40s.]

(*Ib.*). Every person who, without the consent of the owner or occupier, affixes any posting-bill or paper upon any building, wall, &c., or writes upon, defaces, or marks the same with chalk or paint, &c. [40s.]

(*Ib.*). Every person who uses any threatening, abusive, or insulting words or behaviour ‘with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned’ [40s.].

(*Ib.*). Every person, except guards, &c., belonging to H. M. Post Office, blowing any horn, or using any other noisy instrument, for the purpose of calling people

together, &c., or for the purpose of hawking any article, or of obtaining alms [40s.].

(Sec. 57). Every street musician required to depart from the neighbourhood of a house, for reasonable cause, who shall afterwards sound or play in any thoroughfare near such house [40s.], and see 27-8 Vict. c. 55, s. 1.

(Sec. 60). Every person who shall empty or begin to empty any privy between the hours of 6 a.m. and 12 p.m., or remove along any thoroughfare any night soil, &c., between 6 a.m. and 8 p.m., &c.

Offenders may be arrested by any constable without warrant, or may be apprehended by the owner or servant of the owner of the property on or with respect to which the offence shall be committed (sec. 66).

POOR. All Justices residing and having jurisdiction within the boundary of a union, or within a parish having its own Board of Guardians, are *ex officio* Guardians of the Poor of such union or parish, and may act as members of the Board of Guardians in addition to its elected members (4 & 5 Will. IV. c. 76, s. 38).

Overseers.—The appointment of Overseers of the Poor rests with the Justices of the petty sessional division in which the parish is situate, and is made by them at a special session held for that purpose on the 25th of March, or within 14 days afterwards. The selection is usually, but not necessarily, made from a vestry list agreed to by the inhabitants. Two persons, who must be substantial householders, are generally appointed, but a single officer is sufficient in the case of a small parish. The appointment is for one year only. Assistant overseers are appointed by two Justices in petty sessions, on the nomination of the inhabitants in vestry. These continue in office until their appointment is revoked.

Poor-rate.—A poor-rate is made by a majority of the churchwardens and overseers on the net annual value of the

property liable. The occupier and not the owner is the person responsible, except in certain cases of small holdings, provided for by 32-3 Vict. c. 41, s. 3. An outgoing occupier is only liable in respect of such proportionate part as may have accrued during his occupancy (45-6 Vict. c. 20, sec. 3). It must be allowed by the signature of two Justices, but their assent is ministerial merely, and cannot be refused if the rate be good upon the face of it. Publication is then made by affixing a notice on the parish church door on the following Sunday, and the edict is complete. In parishes possessing no church, &c., it is sufficient to affix it in some public and conspicuous place (*ib.* sec. 4). Payment is enforced upon summons before two Justices, who will issue their distress warrant on proof that the occupier was rated, and that he neglected to pay for 7 days after demand. In default of distress, he is liable to be committed for not exceeding 3 months, unless rate and costs be sooner paid. See RATES. Two Justices in petty sessions (with consent of the parish officers) may excuse payment of poor-rate on proof of inability to pay.

Four special sessions are held in each year, in every petty sessional division, for the purpose of hearing appeals against the poor-rate of the several parishes therein comprised. Justices at these sessions have authority to determine all objections upon the ground of inequality, unfairness, or incorrectness in the valuation of the premises, as well as to amend or quash the rate, but they cannot entertain any question as to the actual liability of the premises to be rated at all. Appeal lies from their decision to the next quarter sessions. No Justice can act as above in respect of any rate made for the parish to which he is rated, but there is no objection to his acting in the case of a rate made for any other parish comprised in the union within which he resides.

Relief in General.—A casual pauper, *i.e.*, a destitute wayfarer or wanderer, is entitled to receive temporary relief,

in the way of shelter and food, at the workhouse of any parish or union in the casual wards of which there may be room for his reception. In return for this hospitality he is bound to perform a certain amount of work before he is permitted to continue his travels. Any Justice may order the overseers in a case of emergency to give temporary relief (in articles—not in money) to any poor person not settled, nor usually residing, in their parish, or to give medical relief to any person whatsoever, in the event of sudden and dangerous illness. Any overseer disobeying may be convicted before two Justices and fined £5 (4 & 5 Will. IV. c. 76, s. 54).

Permanent Relief—Maintenance by Relations.—As regards relief of a more permanent character, as when a person through age or infirmity becomes unable to work, and appeals for the means of subsistence to the Guardians of the Poor, it must be understood that he is not to be allowed to throw himself upon the public for support so long as he has relations who are liable to maintain him. And the law will insist upon their fulfilling their obligation in this respect to such an extent at all events as it ought fairly to be exacted. Thus the father and mother, grandfather and grandmother, as well as the children (not grandchildren) of every poor, old, blind, lame, *and* impotent person, or other poor person not able to work and chargeable to the parish, if of sufficient ability, are by the 43 Eliz. bound to maintain such person. Two Justices in petty sessions may make an order with costs accordingly, and the sum assessed, as well as the penalty, may be recovered, as a 'civil debt,' see page 44. The application is made upon summons by the overseers when the person is chargeable to a parish, and by the guardians in the case of a union. The liability in question extends to lawful relations only, and not to reputed parents or illegitimate children. A woman is punishable as a vagrant for neglecting to maintain her bastard child, but she cannot be ordered to do so. But any man who marries a woman having

a child or children, whether legitimate or illegitimate, is liable to maintain such children as part of his family, until they respectively attain the age of 16, or until the death of the mother (4 & 5 Will. IV. c. 76, s. 57).

When a married woman requires relief without her husband, the latter may be summoned at the instance of the guardians, &c., and the Justices may order him to pay such a sum, weekly or otherwise, towards the cost of her relief, as under the circumstances 'shall appear to them to be proper' (31-2 Vict. c. 122, s. 33). See *Dinning v. S. Shields*, May, 1884, 53 L. J. M. C. 90. But this does not apply where the wife has been guilty of adultery; *Culley v. Charman*, 7 Q. B. D. 89. And when the husband of any married woman *having separate property* becomes chargeable, the wife may be proceeded against, and an order made upon her, as in the last case (45-6 Vict. c. 75, sec. 20). These orders are enforceable as civil debts. A married woman having separate property is subject to the same liability to support her children and grandchildren as a widow, but this does not exonerate her husband from his own paternal obligations (sec. 21).

The husband of a lunatic married woman in an asylum, &c., may be compelled to contribute to her support. See 13 & 14 Vict. c. 101, s. 5.

In cases where no relations are to be found, or none of sufficient ability to maintain the pauper, the parish or union in which he is residing must undertake the charge, unless they are in a position to show that his place of settlement, *i.e.*, the place to which he really belongs, and which is legally responsible for his existence, is elsewhere. In that case, means are open to them of removing him thither. On the other hand he is, under certain circumstances to which we shall presently refer, entitled to insist that, in defiance of all question of settlement, he has a right to be left in peace, and has become in point of fact 'irremoveable.' Of course, in the presence of this mechanical difficulty, there is no more to be said.

Settlement and Removal.—The above considerations lead naturally to the most intolerable and entangled department of the whole law—that which relates to the matter of settlement and removal. Statute has followed statute since the days of Elizabeth, methods of acquiring settlement have been invented and exploded, volumes have been written, and years of judicial time consumed in argument. Yet it is only matter of daily experience that we cannot always obtain a ready and conclusive answer in any given case, even from people whose opportunities in the way of experience have been exceptional.

Every English-born subject has a settlement somewhere, whether ascertainable or not, and this settlement is either derivative or acquired. It is derivative when received, like a surname, from somebody else, acquired when obtained by the act of the person himself. A woman upon her marriage derives the settlement of her husband, losing at the same time her maiden settlement (whether derivative or acquired). This is, of course, upon the supposition that her husband has one to confer. Should his settlement be unknown, she does not absolutely relinquish that which she previously had, and, although she can under no circumstances be removed to it against her husband's will, yet, after his death or in the event of his abandoning her, it will be treated as her proper place of relief. Again, the child of a man who has a known or discoverable settlement at the date of its birth, takes such settlement by derivation from its father. On the other hand, should the latter have no such settlement, the child by the first act of its life, that of entering the world in a particular parish, acquires an original settlement in that parish, which, unless defeated by some subsequent act of acquisition, will last to the end of its days. Acts of this kind, that is to say, acts by which a new and independent settlement may be acquired, depend for their efficacy upon various statutes. A man who has a freehold or copyhold estate in any parish, however small, cannot be removed from his property, and if

he reside upon it for 40 days he thereby acquires a settlement in the parish. Or he may do so by renting a tenement and paying poor rate for one year. An apprentice bound by indentures gains a settlement by 40 days' inhabitation in a parish, and mere residence for one year without receiving relief, is, since the year 1866, sufficient to render the resident irremovable. And now by the 'Divided Parishes and Poor Law Amendment Act, 1876' (39 & 40 Vict. c. 61), sec. 34, 'where any person shall have resided for the term of three years in any parish, in such manner and under such circumstances in each of such years as . . . to render him irremovable, he shall be deemed to be settled therein.'

Under the same statute (sec. 35) (1) 'no person shall be deemed to have derived a settlement from any other person . . . except in the case of a wife from her husband, and in the case of a child under 16, *which child shall take the settlement of its father* (or of its widowed mother, as the case may be) *up to that age, and shall retain the settlement so taken until it shall acquire another.* (2) An illegitimate child is to retain the settlement of its mother until it shall acquire another settlement. (3) If any child shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shown what settlement such child or female derived from the parent without inquiring into the *derivative* settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born.'

'It is to be hoped,' observed Cockburn, C.J., in a recent case, 'that any amending Act which the Legislature may pass will be clearer than this!' The above smooth phrases obviously contain material for endless litigation. It has been decided, first of all, that under section 34 the three years' residence required may be reckoned from a period antecedent to the date of the Act, (Aug. 15, 1876), if continuous and prolonged until after that day, *R. v. Brompton Union*

3 Q. B. D. 479 ; but such residence must be in one and the same parish—a residence in different parishes of the same Union is not sufficient, *Plomegate Union v. West Ham Union*, 6 Q. B. D. 576.

As regards section 35, which is also retrospective in operation, a wife, under clause (1), takes the settlement of her husband in any case ; and a child under sixteen who has a father or a widowed mother living at the time when it becomes chargeable takes the settlement of such father or mother, as the case may be, whether such settlement be derivative or acquired ; *i.e.* its position is not affected by the provisions of clause (3) ; see *Woodstock Union v. St. Pancras*, 4 Q. B. D. 18. Clause (2) on the other hand is governed by clause (3). Consequently the illegitimate child of a mother having only a derivative settlement does not take that settlement but is relegated to the place of its birth, *Overseers of Manchester v. St. Pancras*, 4 Q. B. D. 409. It may, however, acquire a settlement for itself, under section 34, even during infancy, *R. v. Leeds*, 4 Q. B. D. 323 ; 48 L. J. M. C. 129. Clause (3) refers, as we have just seen, to illegitimate children, and also to legitimate children not falling within the terms of clause (1).

The words underlined in section 35 have a mysterious tone. Most people would inquire why, if a child is to take his father's settlement up to 16, and retain it afterwards, should the age of 16 be mentioned at all. The intention seems to be that the child shall take and keep his derivative settlement up to 16, exclusively of any other. Up to that time, he is assumed not to have reached the period of 'emancipation' (the arrival of which depends in general upon the circumstances of each particular case), when a person, being released from the parental tie, is at liberty to acquire an independent settlement. After 16, he still retains his derivative settlement, but with the power at any time of exchanging it for one procured by his own act. See *Wolstanton Union v. Norwich Union*, Q. B. May 15, 1882, 46 J. P. 377.

Removal.—Orders of removal are made by two Justices upon the application of the guardians. No person can be removed unless actually chargeable to the parish or union complaining; but every person convicted as a rogue and vagabond, or idle and disorderly person, is to be deemed so chargeable, and may be dealt with accordingly (5 Geo. IV. c. 83, s. 20). And whenever any person has children having no other settlement than his or her own, such children are removeable whenever he or she is removeable, and *vice versa*.

The guardians of a union to which the removal of a pauper is ordered, are the proper parties to appeal against it; and their appeal is to be determined at the next general or quarter sessions for the county, &c., in which the parish from whence the removal was directed may be situate. See 11 & 12 Vict. c. 31.

Workhouse Discipline, &c.—A casual pauper applying for or receiving relief is to be admitted, dieted, and set to work in such manner and under such regulations as the Poor Law Board shall prescribe; and he is not entitled to discharge himself (under any circumstances) before nine o'clock in the morning of the second day following his admission, nor before he has performed his allotted task; 34-5 Vict. c. 108, ss. 5, 6 (amended by the 'Casual Poor Act, 1882,' 45-6 Vict. c. 36, sec. 4). And any inmate, not a casual, may be detained by order of the guardians for 24 hours after he has given notice of his intention to quit, and for a longer time if he have previously discharged himself within a certain period (sec. 4). Any pauper who absconds prematurely from the casual ward, or while detained as above, or who refuses to work or obey regulations, or makes a false statement in order to obtain relief, is to be treated as an 'idle and disorderly person,' see VAGRANTS; while the wilfully destroying *his own clothes*, or any of the workhouse property, constitutes him a 'rogue and a vagabond' (sec. 7). The master or porter, or officer in charge of the casual ward, may take before a Justice, without summons or warrant, any inmate charged

with misbehaviour, punishable upon summary conviction ; and, if committed to prison, may himself convey him thither, with, for the above purpose, all the powers of a constable.

Two Justices may direct that any adult person wholly unable to work, and being entitled to relief in any union, shall receive such relief without being compelled to reside in the workhouse (4 & 5 Will. IV. c. 76, sec. 27).

Finally, it may be noted that when a union extends into two or more distinct jurisdictions, the guardians may apply at their pleasure to the Justices acting for either or any of these jurisdictions, in respect of any matter which has arisen in any part of their union (30-1 Vict. c. 106, s. 27).

POST-OFFICE. Every offence under the 'Post Office Offences Act,' 7 W. IV. & 1 Vict. c. 36, and the 'Post Office Protection Act, 1884,' 47-8 Vict. c. 76, for which the penalty is not more than £20 and costs, may now be prosecuted before a court of summary jurisdiction. Fines to the Exchequer. The following among other offences are punishable under the 7 W. IV. & 1 Vict. c. 36.

1. (Sec. 2).—Sending or conveying otherwise than by post a letter not exempt from the privilege of the Postmaster General (*i.e.* sent by private friend 'in his way, journey or travel,' or by messenger on purpose, or by carrier with the goods which it may concern, &c.)—£5 per letter.

2. (Sec. 7).—Drunkenness, negligence, or misconduct upon the part of any person employed to carry or deliver post letters, whereby their safety may be endangered or their delivery delayed,—£20.

3. (Sec. 26).—Stealing or embezzling post letters by a P. O. official [Pen. Serv. 5—7 yrs. or impr. 3 y.]; if containing money [Pen. Serv. 5 yrs.—Life; or impr. 4 y.].

4. (Sec. 27).—Stealing post letters, (N.B. a post letter is any article permitted to be sent by post, and is to be deemed a post letter from the time of its being posted until the time of its being delivered to the person to whom it is

addressed, or at his house or office, or to his servants, &c. (46-7 Vict. c. 76, sec. 19) [Pen. Serv. 5 yrs.—Life; or impr. 4 y.].

5. (Sec. 31).—Fraudulently retaining, or wilfully secreting or detaining, a post letter which ought to have been delivered to any other person, or which has been sent—whether found by the person charged or by any other person, [Indictable misdemeanour. Fine and impr. *ad lib.*]

Post Office Protection Act, 1884.—For an epitome of this Act, and further information as to Post Office offences, the reader is referred to Appendix XXI., page 474.

PRACTICE. The various subsidiary rules which regulate the administration of the law, and the transaction of business in courts of justice, form a code in themselves, which goes among lawyers by the general name of ‘Practice.’ Some are mere matters of detail, which, if they served no higher purpose than the laws of cricket, would be necessary to secure order, and uniformity of procedure. Others are matter of principle—part and parcel of our notion of right and wrong—and only express in terms what we have already been taught by conscience and common sense. The following are among the most frequent of application. We will begin with those which may be mainly considered as

MATTERS OF DETAIL

1. **Non-appearance of Defendant.**—It happens, now and then, that at the time of hearing named in the summons, the defendant does not appear. In such case, upon proof that the summons was duly served a reasonable time before such hearing, a question which it is for the Justices present to decide, the court may proceed to hear and determine the information or complaint in his absence. ‘Justices ought to be very cautious how they proceed in the absence of a defendant, unless they have strong ground for believing that

the summons has reached him, and that he is wilfully disobeying it;' per Cockburn, C.J., *R. v. Smith*, L. R. 10 Q. B. 604. Or they may issue their warrant for his apprehension, and adjourn the hearing, which is usually the better way. The defendant, when taken, may be brought before *any* Justice having jurisdiction, who will commit him to such custody as he may think fit, and order him to be brought up at a certain time, of which the informant or complainant will have notice. No power of taking bail in such cases is given by statute. It is sufficient, generally, if the defendant appear by counsel or solicitor (*infra*, sec. 4), unless his *personal* attendance be necessary for the purpose of identification, &c., in which case it may be enforced by warrant as above.

2. Non-appearance of Plaintiff.—If the defendant be present, but the informant or complainant fail to appear, either personally or by counsel, the Justices should dismiss the information, unless in their discretion they think proper to adjourn the hearing, which they are at liberty to do, to such time and upon such terms as they may think fit. In the latter case, the defendant must either be committed in custody during the interim, or discharged in a recognisance, with or without sureties, to re-appear.

3. Irregularity in Proceeding—Variance—Waiver.—The defendant's appearance, either in person or by solicitor, cures, as a rule, all mere irregularities in the service of the summons, which has already fulfilled its office in bringing him before the court; see *R. v. Hughes*, cited at page 340. 'No objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, or summons, and the evidence adduced on the part of the informant &c. . . . but if any such variance shall appear to the Justice or Justices present to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such Justice or Justices, upon such terms as he or they shall think fit, to

adjourn the hearing of the case'; 11 & 12 Vict. c. 43, s. 1. It is clear that in all cases where a sufficient information has been laid (which is the foundation of magisterial jurisdiction as regards matters criminal) any court having jurisdiction as regards time and place may at any time call upon the defendant, if he happens to be before them, to answer the charge. He is entitled, as of course, to have the hearing adjourned in order to enable him to prepare his defence and obtain the attendance of witnesses, but otherwise he is in exactly the same position as if he had appeared in obedience to a regular summons: see per Field, J., in *Blake v. Beach*, 45 L. J. N. S. M. C. 116, and *R. v. Hughes*, *suprà*. Whatever objection a defendant may be entitled to urge upon the score of irregularity must be promptly insisted upon, since if he waive his right, taking his chance of a decision in his favour, it is too late afterwards to dispute the jurisdiction. And this consideration applies to various objections which, if raised in the first instance, might have been fatal to the charge; as, for example, that the information was not upon oath in a case where it is required to be so, &c.

4. Counsel.—In all summary proceedings, both informant or complainant and defendant are at liberty either to conduct their respective cases themselves or to employ counsel or a solicitor for that purpose, see SOLICITORS. No person who has not been admitted and enrolled, or who has not a certificate in force, is entitled to appear in the latter capacity; but an articled clerk, having a written authority from his employer to conduct a case, is usually permitted to do so. Either party to a proceeding may give his evidence as a witness while acting as his own advocate; but if he employ professional assistance he has no right to address the court himself in the way of argument (a). And it is to be observed that while,

(a) A point of considerable importance was recently ruled by Hawkins, J., at Leeds Assizes (*Times*, Feb. 5, 1880). His lordship held that a prisoner defended by counsel is not thereby precluded from giving his own version of the transaction in respect of which he is

if a party act as his own counsel, he is not precluded from making any statement which may appear conducive to his own advantage, his counsel enjoys no such licence, but must conform to the rule of professional advocacy, that nothing is to be stated in address which it is not intended to support in evidence. The officer of the guardians of a union may conduct proceedings on their behalf, although he be not a solicitor; and, under the Public Health Act, 1875, the Local Authority may appear before any court by their clerk, the Commissioners of Inland Revenue may authorise any person to represent them, and under the Elementary Education, Vaccination, and other Acts, any member of the defendant's family is permitted to appear in his stead.

5. Court, how far Open. Contempt.—The place of hearing, upon any summary proceedings, is an open court, to which the public may have access, so far as it will conveniently contain them. But Justices have always exercised a discretion in excluding women and boys during investigations at which they clearly have no business to be present. Justices it appears have no power to commit for contempt of court, and should content themselves with ordering the expulsion of the offender, or binding him over, in more flagrant cases, to his good behaviour.

6. Adjournment.—Before, or during, any summary proceedings, any one Justice, or the Justices present, may adjourn the same to any future time then appointed, and in the meantime either suffer the defendant to go at large, or commit him to gaol, or to such other safe custody as they may think fit, or discharge him upon his entering into a

charged. It is obvious that it may be to his immense advantage to be allowed to offer, in his own words, the best explanation in his power. Nothing is more flat and ineffectual than the suggestion of counsel that, 'as he is instructed,' such and such were the facts. The story, told at second hand, becomes a simple hypothesis invented for the occasion. See a letter and anecdote on the subject from the late Sir Watkin Williams, J., *Times*, Dec. 29, 1883.

recognisance, either with or without sureties for re-appearance in due course. There is no statutory limit to the time during which a hearing may be thus adjourned; in which respect the process differs from the *remand* of a person charged with an indictable offence (see page 26). But to commit a defendant for an unreasonable period would be a clear excess of jurisdiction. And if, at the appointed time, either or both of the parties fail to attend, either personally or by attorney, the Justices present may proceed with the case as if such party or parties were before them; and, if the informant or complainant be the defaulter, may dismiss the information or complaint either with or without costs. See also page 36.

7. Witnesses.—[See page 179.] Any witness refusing to be sworn, or subsequently to answer questions, without sufficient excuse, may be committed by any Justice present to the gaol or House of Correction for not exceeding seven days, unless he shall in the meantime consent to be examined and to answer (11 & 12 Vict. c. 43, s. 7). The above applies only to witnesses who have been summoned to attend and give evidence; and it is extremely doubtful whether a Justice has power to summon an unwilling prosecutor, although he might be compelled to attend by Crown-office subpoena. There is no doubt, however, that, when present, he is bound to give evidence (14 & 15 Vict. c. 99, s. 2). It is not unusual, upon the application of either party, to order the witnesses on both sides to leave the court. But, if this order be evaded or disobeyed, it would be obviously unfair to punish the person chiefly interested by rejecting this portion of his case. The question of EVIDENCE generally will be found considered under that head.

8. Alteration in Sentence. Re-hearing.—Whenever a conviction is required to be made by two or more Justices, such Justices must be present, and act together during the whole of the hearing and determination of the case. Consequently, any alteration in a sentence once pronounced must

be made before any of the Justices who concurred in it have quitted the court. After a sitting at which a case is disposed of upon the merits has come to an end, it is finally disposed of so far as they are concerned. They are then *functi officio*, and have no power to re-hear it, or to re-open the investigation upon any grounds.

9. Giving time for Payment of Fines.—Justices are frequently requested by persons convicted to allow time for the payment of their fines, or to accept the amount by instalments. Provision is now expressly made for this indulgence, under the Summary Jurisdiction Act, see pages 17 and 52.

10. Sureties of the Peace.—It sometimes happens that at the conclusion of a case the Justices, instead of inflicting punishment, content themselves with binding over the defendant, or possibly both parties, to keep the peace. This they are at liberty to do even after a charge of assault has been dismissed and a certificate granted (page 15). With regard to the practice under the Summary Jurisdiction Act, see SURETIES.

Various matters of Practice, arising at the successive stages of Summary Procedure and in the course of committal for trial, will be found incidentally touched upon in the chapters devoted to Preliminary Notes. See also SUMMARY JURISDICTION. We will now pass to the consideration of some few

MATTERS OF PRINCIPLE.

11. Justice Interested.—*Nemo potest esse simul actor et judex*—‘It is against reason, if wrong be done to any man, that he thereof should be his own judge,’ Co. Litt. A Justice should carefully refrain from taking part in any proceeding in which he has the slightest individual interest, and ‘when-ever there is a real likelihood that he would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act’ (per Blackburn, J., *R. v. Rand*, 35 L. J. M. C. 157). Such a performance as that of the Justice, who tried and sentenced one of his own

ploughmen for breach of contract with himself, could hardly occur again. The following, however, affords a useful caution. By 30-1 Vict. c. 115 (since repealed), a Justice was declared not to be incapable of acting upon the trial of an offence arising under any Act to be put in execution by a Local Board, by reason only of his being, as a ratepayer, indirectly interested in any penalty which might be inflicted. An information was laid by a Local Board for polluting a stream. The Chairman of this Board, who was also a Justice, injudiciously omitted to withdraw during the hearing. He, however, abstained from taking any part in the proceedings, or in the conviction which followed. The Court of Queen's Bench, disregarding the latter consideration, held that, while there was no direct personal interest, there was an unmistakeable bias, and that he was really sitting as Justice in a case in which he was interested. The conviction was set aside accordingly, and he was ordered personally to pay the costs. No Justice is now incapable of acting in any matter arising under the Public Health Act, 1875, by reason of his being a member of any Local Authority (sec. 258). But in *R. v. Milledge*, May 15, 1879, 4 Q. B. D. 332, where three members of a Sanitary Authority had acted as Justices, the conviction was quashed. 'This section,' said Cockburn, C.J., 'certainly does not warrant a person in sitting as a judge in a cause in which he is prosecutor.' Any one in short by whom a prosecution has been directed, or who has taken an active part in its institution, or who has such a substantial interest in its result as makes it likely that he has a personal leaning towards a conviction, has clearly no business upon the adjudicating bench. See the judgment of Field, J., in *R. v. Mayor and JJ. of Deal*, *suprà*, p. 145, and *R. v. JJ. of Great Yarmouth*, 51 L. J. M. C. 39. Justices, therefore, must be careful how they accept the frankest (apparent) statutory authority for a course of action in contravention of the 'natural equity' enforced by the above maxim. A Justice who may be a shareholder in a railway company making or

interested in a charge, is disqualified from taking part in the proceedings; and, if member of a school-board, ought not to be present during the hearing of a case instituted by such board. Any objection upon the above score may be waived at the time by the parties themselves; and, if raised afterwards, it must be upon sufficient evidence that the objecting party was unaware of such ground of objection at the hearing, and that there was nothing in his conduct from which acquiescence might be inferred. He must not take the chance of a decision in his favour, with a protest all the time in his pocket.

12. Criminal Intention.—*Actus non facit reum nisi mens sit rea*—‘In order to make acts criminal they must be done with a criminal mind; and this criminality of mind must always be alleged in the pleadings,’ Every man, however, is supposed to understand the laws of his country, except upon which assumption laws would be written in vain. Every infraction of these laws is therefore *prima facie* evidence of a guilty motive, giving, of course, their proper weight to such words as ‘wilfully,’ ‘knowingly,’ ‘maliciously,’ and the like, when these occur in a statute; (see *Cundy v. Lecocq*, 53 L. J. M. C. 125). Every man is further supposed to intend the natural or probable consequence of his act, and cannot shelter himself from liability under the plea that the result was such as he never expected. He is also responsible as regards things which he is bound not to allow to happen, or to permit to be done by others. A pawnbroker’s servant, as such, enjoys perpetual innocence, as all his sins of omission or commission pass at once and entire upon the conscience of his master. It is no answer to a criminal charge that a man was mistaken as to facts which he was bound to know or take notice of at his peril. A man who took a girl under sixteen out of her father’s possession was convicted of the misdemeanour, although he had been at great pains to satisfy his own mind, and obtained what was really very reasonable evidence, that she was beyond the age of parental control.

13. Claim of Right. Ouster of Jurisdiction.—If a man be brought before Justices charged with an apparently wrongful act, and his answer be that he had *as matter of title* a right to do the act complained of, it is manifest that the first thing to be settled is whether this answer is conclusive. At any rate, it would be clearly wrong to punish him criminally, leaving the question open as to whether he was a criminal at all. But a point of title is one which it does not fall within the province of Justices to investigate. Consequently, whenever there is a genuine question of this description open between prosecutor and defendant, and it appears that the latter acted honestly in the belief that he was justified in doing as he did, Justices have no power to entertain the case. The prosecutor, before he appeals to their summary jurisdiction, must resort to his civil remedy, and establish his right to prevent or punish the alleged grievance. It is for the Justices themselves to decide, upon the general evidence before them, whether the act charged was done in the exercise of a *bonâ fide* claim of right. They are not to accept the mere statement of the defendant, and should disregard it altogether where, upon his own showing or from other plain considerations, it is clear that such assertion is groundless. On the other hand, if the defendant can sufficiently support his allegation to induce a doubt, it is enough to stay the jurisdiction, and the parties should be dismissed to try their rights elsewhere. See *Newcombe v. Fewins*, Appeal, Nov. 7, 1876, 41 J. P. 581; *R. v. Young*, April, 1883, 52 L. J. M. C. 55, and ASSAULT, page 88.

14. Res Judicata.—*Nemo bis vexari, &c.* A defendant must not be called to account a second time for the same, or substantially the same, ground of information or complaint. A man was convicted of ‘wilful misbehaviour causing hurt,’ under the Highway Act, he having struck the horse ridden by the prosecutor. The latter afterwards obtained a second conviction against his assailant under another Act for the assault upon himself involved in the transaction. But this

second conviction was quashed upon the above ground. See also *R. v. Blount*, Q. B., May 12, 1879. 'The true test as to whether a previous conviction is a bar, is to inquire whether the evidence necessary to support the second proceedings would have been sufficient to procure a conviction upon the first'; *R. v. Drury*, 18 L. J. M. C. 183. The certificate already alluded to (p. 15), as given where a charge is dismissed, is the proper answer to ulterior proceedings. Otherwise the defendant must show that the case was disposed of 'upon the merits,' since if merely dismissed for want of form or other technical reason the adjudication is not final, and a second information or complaint may be resorted to. And in cases of bastardy, as may be seen elsewhere, a second application may sometimes be made after the first has failed. It is not necessary that the previous proceedings should have been in the same court. See also pages 88, 311, and *Brunsdon v. Humphrey*, Q. B. App. 53 L. J. N. S. 476.

PREVENTION OF CRIME. The Act of 1871 bearing this name (34-5 Vict. c. 112) contains a variety of provisions with reference to persons of the criminal class. It deals with the supervision and obligations of convicts on licence (ticket-of-leave men), with the registration and photographing of criminals, the consequences of second convictions, the harbouring of thieves, children of convicts, search for stolen property, &c. The statute in its integrity scarcely falls within the compass of these notes, more especially as many of its more important clauses are dealt with elsewhere. We may mention, however, that a person convicted upon indictment for the second time of felony or other 'crime,' as defined by sec. 20, is not only liable to be placed under police supervision (sec. 8), but that he continues, during seven years after the expiration of his second sentence, under a peculiar ban. He is punishable, for example, with twelve months' hard labour, should a court of summary jurisdiction be of opinion that he is 'getting his livelihood

by dishonest means,' (sec. 7). And he may be arrested without warrant upon the spot by any constable, or owner or occupier of the premises or his servant, and dealt with in like fashion if found in any dwelling-house, yard, shop, garden, nursery-ground, &c., 'without being able to account, to the satisfaction of the court before whom he is brought, for his being found on such premises.'

The following extracts from a letter written by the High Constable of Cheshire, which appeared not long since in the *Times*, contain some curious information:—

'It is estimated upon *data* which ensure substantial accuracy, that there are at large in this country about 40,000 individuals who are either known thieves or under the suspicion of the police. Nearly 3,000 are liberated from the convict prisons alone every year, a large proportion of whom, notwithstanding police and other precautions, are lost in the crowd until they find themselves back in prison again.

'Twenty years ago the police established what are known as "routes," and many an old bird has been recognised by that means. When a prisoner has been arrested, and it is suspected from his familiarity with prison rules and for other reasons that he is known to the police, notwithstanding his air of pastoral simplicity, he is photographed and his "picture" is circulated. In a few days it is returned with an accumulation of information signally fatal to the prisoner's assumed innocence, and largely in the public interest. Instead of a "moon" (month) in the local gaol, he finds himself before a jury as an old offender, and ultimately back again to a convict establishment.

'The "Habitual Criminals Register" is an imposing-looking tome. In six years and a-half the names of nearly 180,000 persons were registered in its pages. In every case the criminal had been more than once convicted on indictment for serious crime against the community.

'The latest attempt, however, to checkmate and deal with the habitual criminal is the "Register of their distinctive

marks and peculiarities." The name only has proved an uncertain means of tracing their antecedents. It is found, however, that very many of these people bear about with them some mark or peculiarity which answers much better. Thus, of 2,914 people who were liberated in 1876, nearly one-half were indelibly stamped in this way, and this information is now carefully arranged in the new register. A thief may assume any name he may think proper; the chances are about even that he is ear-marked and known more certainly than by name. The register is a curiously interesting production. The first issue shows who are "deaf," "very deaf," "men of colour," "blind of one or both eyes," those who "squint," or have a "glide" or a "cast" in their organs of vision. Twenty-five per cent. have "broken or crooked noses," and a few have their "ears slit."

'The mania for tattooing, from which it will be remembered even "the Claimant" was not free, exists largely among thieves. There is first of all the D (deserter from the army), which occurs very frequently; two D's, almost equally so, and sometimes even three. B C's (bad character) appear on the left sides of a sufficient number to justify the conclusion that a bad soldier is often something more. The variety of marks upon the chest is very extensive . . . the arms are frequently used for this kind of art, every fourth criminal being tattooed with some device. . . . Among others, we come upon such as "Mary," "In memory of my parents," "Snow," "Love," and even "Liberty," with mixed feelings.'

PRINCIPAL AND ACCESSORY. Since the foundation of all summary jurisdiction must be discovered in the statute-book, it follows that no punishment can be awarded, under this process, to the person who merely advises or promotes the commission of an offence, without some special enactment. It is provided accordingly in Jervis' Act (No. 2), sec. 5, that 'every person who shall aid, abet, counsel, or

procure the commission of any offence which is, or hereafter shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction; and shall be liable on conviction to the same forfeiture and punishment as such principal offender,' and may be proceeded against either in the county, &c., where such principal offender may be convicted, or in that in which the offence of aiding, &c., may have been committed. But the principal offence *must have been actually committed*; although the offender need not have been punished.

Indictable Offences.—Every one is principal to an offence, whether felony or misdemeanour, who (i) actually commits it, or (ii) aids or abets its actual commission, or (iii) counsels or procures such commission.

Persons guilty of (ii) and (iii) are sometimes described as principals in the second degree; while (iii) is sometimes said to be an 'accessory before the fact.' But, so far as punishment is concerned they are all in the same boat (24-5 Vict. c. 94).

The expression 'accessory after the fact' is applied, in the case of felony, to any one who receives or assists the felon, with knowledge of his crime, and with the view of enabling him to escape justice. This is in itself a felony, punishable, generally, with two years' hard labour. An accessory after the fact to murder is, however, liable to penal servitude for life.

A Justice has no authority to promise pardon to an accomplice who wishes to save his own skin by rounding on his companion in crime. He should commit him for trial in the usual manner; and, if his evidence seem to be necessary to ensure conviction of the principal offender, should direct that the fact be mentioned at the assizes or quarter sessions, before the bill is submitted to the grand jury. It is then in the discretion of the court to allow him to be examined as a witness upon such bill, although he does not by thus giving evidence acquire any legal right to a pardon for his own share in the business.

PRISONS. By the 41-2 Vict. c. 21 a radical change was effected in our prison system, so far as regards the local (as distinguished from convict) establishments. All county and borough prisons—the appointment of all officers—the control and custody of all prisoners, together with all incidental powers, were withdrawn from the hands of Justices in Quarter Sessions, and transferred to the Secretary of State. Subject to his control, the general superintendence of these places of confinement was made over to five ‘Prison Commissioners,’ by whom all acts are in future to be done which may be necessary for the maintenance of prisons and prisoners within their jurisdiction. In these gentlemen are likewise vested all powers which in days gone by were exercised by ‘Visiting Justices,’ whose office exists no more. The sacrifice to centralisation is complete. The sole and subordinate function assigned to Justices, under the recent Act, is as members of a ‘Visiting Committee,’ annually appointed for every prison. In this capacity they are invited to co-operate, generally, with the Commissioners in promoting the efficiency of the service, and to exercise a certain amount of delegated authority, in the way of internal discipline and the care of prisoners.

Visiting Committees for counties are appointed at quarter sessions in December. The appointment in boroughs takes place at special sessions, held at the same time. Meetings at the prison are usually held once a fortnight. It is the duty of each committee, among other things, to hear and adjudicate upon any report made by the Governor, as regards the misconduct of any prisoner. He is himself competent to punish many minor offences. But in worse cases the matter is referred to the committee, who after taking the evidence of the warders, &c., upon oath in the prisoner’s presence, and hearing his defence, may order him to be confined in a punishment cell for not more than 14 days, or, in the case of a person convicted of felony or sentenced to hard labour, to corporal punishment. The number of lashes which may be

inflicted is limited to 18 in the case of a person under 18, and to 36 if over that age. They may be ordered either with the 'cat' or birch-rod, except as regards persons under 18, who are only to be submitted to the latter.

The Governor has no power to place a prisoner in irons, except in cases of urgent necessity, nor must he keep him 'under mechanical constraint' for more than 24 hours without an order in writing from the Visiting Committee, specifying the time during which such restraint is to continue.

The Committee are expected to visit the prison at frequent intervals, and to hear any complaints which may be made to them by prisoners. A prisoner, at his request, is to be heard privately. For this purpose (in London) its members so arrange as that one of their number shall in each week make his round of inspection upon a day and at an hour selected by himself.

The Committee may at their discretion allow certain extra indulgences in the case of prisoners awaiting their trial, and of 'misdemeanants of the first division.'

Any Justice, whether upon the committee or otherwise, having jurisdiction in a place where a prison is situate, or in the place where any offence in respect of which any prisoner therein confined was committed, may at any time visit and examine such prison, and enter any remarks in the visitors'-book. The attention of the Committee is to be drawn to any such entries at their next meeting. No Justice, however, is entitled under this power to visit any prisoner under sentence of death, or to communicate with any prisoner except in reference to his treatment in prison.

There is no occasion, for present purposes,

'To tell the secrets of our prison-house' (a),

but we may note two or three points as regards the treatment of short-sentence criminal prisoners. Justices, who may not

(a) For 'a prison anecdote,' see Appendix XX.

happen to be members of Visiting Committees, are interested in knowing the exact force of sentences which they are compelled to pass.

We may premise that persons awaiting trial, who are confined for safe custody only, are neither considered nor treated as criminal prisoners, from whom they are kept apart. They are treated with every consideration and indulgence consistent with the necessary conditions of prison life. The same observations apply to 'misdemeanants of the first division,' who are persons convicted but not sentenced to hard labour, and who are specially directed to be placed in this category by the court at their trial. 'Debtors' stand upon the same exceptional footing. These are persons imprisoned for non-compliance with an Order of Justices to pay a non-penal sum of money, or in default of finding sureties when required to do so.

A convicted prisoner is supplied with a complete prison suit, which he is required to wear. During the whole of his sentence, if it does not exceed one month, and during one month if it does, he is required to sleep upon a plank without mattress. The gradual remission of this inhospitable treatment may be earned by his industry after one month. Every male prisoner sentenced to hard labour is kept at labour of the first, or severer, class during the whole of his sentence, if it does not exceed one month, or during one month if he has longer to serve. The privilege of remission to hard labour of the second class is not granted at all unless duly earned.

Hard labour of the first class may consist of work at the tread-wheel, crank, or capstan. Or it may be exacted in that ingenious form of mental and bodily torture known as 'shot-drill.' Where no such appliances are employed, the picking of 3 lb. weight of oakum is usually enforced as a substitute. The small faggot of old rope which contains this quantity looks innocent enough. The amount of pain and punishment involved in untwisting it, and the astonishing

aspect of the result, may easily be made matter of private experiment.

Ordinary Diet.—Prisoners sentenced to seven days or less are placed upon diet No. 1, viz., 8 oz. of bread for breakfast, 1½ pint of stirabout (containing 3 oz. of oatmeal and 3 oz. of Indian meal) for dinner, and 8 oz. of bread for supper.

Prisoners sentenced for more than seven days, and not more than a month, are placed upon No. 1 diet for the first week. During the remainder of their term they are promoted to No. 2, which consists of 6 oz. of bread and 1 pint of gruel for breakfast; 6 oz. of bread, and 8 oz. either of potatoes or suet pudding, or half pint of soup for dinner. Supper the same as breakfast. In the case of men without labour, women, and boys under 16, 5 oz. of bread, instead of 6, is given. Prisoners sentenced for more than one month, and not more than four, are placed upon No. 2 diet for the first month, after which they are advanced to No. 3, in which 3 oz. of meat for the first time appears, once a-week, in the *menu*. There is a fourth scale applicable to the case of more protracted sentences.

Punishment Diet is of three classes. No. 1 consists of 1 lb. of bread per diem, with water *à discrétion*. No labour is exacted on this primitive fare, which is to be varied after 3 days, for an equal term of No. 2, below, and so on; but no punishment of this kind is to be prolonged for more than 15 days.

No. 2, or 'stirabout diet,' comprises a breakfast of 8 oz. of bread, dinner of 1 pint of stirabout (2 oz. oatmeal and 2 oz. Indian meal), with 8 oz. of potatoes. Supper 8 oz. of bread. This diet may be ordered for 21 days; after which the prisoner enjoys an interval of one week's ordinary meals, according to his class, before returning to it for 14 more, if his punishment extends to the extreme period of 42 days.

No. 3, 'full stirabout diet,' implying a rather more liberal allowance, may be ordered, with a corresponding

interval, for 84 days. This is supposed to be sufficient for the performance of a full daily task of hard labour.

PROSECUTION OF OFFENCES ACT, 1879. Under this Act (42-3 Vict. c. 22), the appointment was provided for of an officer to be called the Director of Public Prosecutions. The duty of this functionary, under the superintendence of the Attorney-General, is to undertake or carry on criminal proceedings in any court, and to give such advice and assistance to persons concerned in any proceeding of the kind, as may be prescribed by regulations to be made by the Attorney-General with the approval of the Lord Chancellor and a Secretary of State. Nothing is to interfere with the right of any person to institute or carry on criminal proceedings upon his own account.

It is provided by sec. 5 that 'it shall be the duty of every Clerk to a Justice or to a police court to transmit, *in accordance with the regulations under this Act*, to the Director of Public Prosecutions, a copy of the information and of all depositions and other documents relating to any case in which a prosecution for an offence instituted before such Justice or Court is withdrawn, or not proceeded with, within a reasonable time.'

Regulations have been issued (15 Jan. 1880); but they are applicable *exclusively* to 'such class of cases as have hitherto been conducted by the Solicitor of the Treasury by order of the Secretary of State, and to other cases for the proper conducting of which, in his (the Public Prosecutor's) opinion, the ordinary mode of prosecution is insufficient.'

The 'Prosecution of Offences Act, 1884' (47-8 Vict. c. 58), revokes, as from August, 1884, all appointments made in pursuance of the above Act, and provides that the Solicitor for the Treasury for the time being shall be and act as Director of Public Prosecutions, with all the powers of such Director.

It also provides (sec. 3) that 'the chief officer of every police district in England,' as explained by sec. 4, 'shall,

from time to time, give to the Director of Public Prosecutions information with respect to indictable offences alleged to have been committed within the district of such chief officer, and to the dealing with those offences, and the said information shall contain such particulars and be in such form as may be for the time being required by regulations under the principal Act.'

PUBLIC HEALTH ACT, 1875. Springing as it did from the ashes of many previous Local Government Acts, which it extinguished at its birth, there is a fascination about this important, elaborate, and comprehensive Code. It resembles the proclamation of a benevolent despot, ordaining all things aright. The idea is, that there shall not throughout all England be a spot in which a man is not compellable, by Local Authority, to take care of his own health, and to abstain from disarranging that of his neighbours. Nothing is done by halves. He may build his new house, like a Spanish railway-station, without a *cabinet* upon the premises. But the Inspector of Nuisances will drop in with his plumbers, and not only find room for that indispensable apartment, but leave him under no sort of obligation in respect of the cost. He may require no water-supply, or propose to content himself with less than is really necessary for cleanliness and cooking. But the Local Authority will not allow him to economise in this dangerous direction, and will furnish him with a useful cistern, upon the usual terms. A dust-bin he must have of course. But he must not be his own dustman, or he will get into trouble. An appointed officer has a vested interest in everything of that description produced upon the premises.

We will endeavour, in as few words as possible, to give an epitome of the Act, so far as the matter lies between the Local Authority and the public at large. Its provisions are full of interest both to the Justice and the general reader. To the former, indeed, a correct view of their broad tenour is indispensable. The Local Authority may command ; but it

is to the sword of summary jurisdiction that they must appeal when their edicts are disputed or disobeyed.

• AUTHORITIES FOR EXECUTION OF ACT.

The first thing that strikes us, then, is the division of all England into Urban and Rural Sanitary Districts, governed respectively by a body of home-rulers, called Urban and Rural Sanitary Authorities.

Urban Districts.—The following are declared to be Urban Districts, viz. :—

- (1) Boroughs ;
- (2) Improvement Act Districts (constituted before 1875) ;
- (3) Local Government Districts (whenever constituted).

It may happen, of course, that any one of these places is included, either wholly or partially, within the area of another. Provision is made for this contingency, with which it is not necessary for present purposes to embarrass our story.

The Sanitary Authority of a borough, for the purposes of the Act, are its Mayor, &c., in council ; that of an Improvement District are the Commissioners ; that of a Local Government District, the Local Board. Every Local Board, and any Improvement Commissioners, are, in their capacity as Urban Authorities, to continue to be or become bodies corporate, with the usual privileges of name, perpetual succession, and a common seal.

Rural Districts.—The area of any union which is not coincident in area with an Urban District—or so much of it as lies outside such district, if intermixed—is to constitute a Rural Sanitary District, and the Guardians of the Union are its Sanitary Authority (sec. 9). It may be observed that the last-mentioned body, or a certain proportion of the rate-payers of their union, may, if dissatisfied with their lot, address the Local Government Board upon the subject. And the latter is authorised to direct that to all intents and purposes their Rural District shall become Urban, and may invest its rulers

with all the rights and powers of an Urban Authority (sec. 276).

It would be impossible, in these few pages, to do more than thus indicate the various classes who, for sanitary purposes, form the Local Authorities of the districts which are committed to their sway. For matters appertaining to the election of Local Boards—the conduct of business in general—the appointment of Medical Officers of Health, Inspectors of Nuisances, and other officials, &c., reference must be made to the Act itself (see secs. 189—206, and Schedules, 1, 2, 3, &c.). The same observation will apply to many matters which form part of the internal machinery of the Act. We must confine ourselves, as already announced, to those in which the interference of a Justice is most frequently required, or which lie strictly between the Local Authority and the general public.

Legal Proceedings.—All offences and penalties may be respectively prosecuted and recovered (by distress) before two Justices in petty sessions, or a stipendiary magistrate. Proceedings are not to be taken for a penalty, except *by some party aggrieved*, or by the Local Authority, without the consent of the Attorney-General. Penalties (not specially provided for) go to the Local Authority, or half to any informer. Appeal to Quarter Sessions [see page 73] (secs. 251—269).

No Justice is to be deemed incapable of acting by reason of his being a member of any Local Authority, or on account of his interest as a ratepayer (sec. 258); but a conviction in which members of a Sanitary Authority take part, may be quashed—the same persons having acted both as prosecutors and judges: see page 365.

SANITARY PROVISIONS.

Sewers and Drains.—Subject to certain exceptions, all existing and future sewers and drains of every description (except house drains), within their district, are vested in the Local Authority, who are bound to keep them in repair and

to make such additional sewers as may be necessary, with the most extensive powers for that purpose. As regards this branch of their duty, see an important decision in *Glossop v. Heston Local Board*, May 8, 1879, 12 Ch. D. 102. They have authority to enforce the drainage or to alter the existing drainage of private houses, and in Urban Districts to compel the proper drainage of newly-erected buildings, under a penalty of £50 (secs. 13—26).

Disposal of Sewage.—For the purpose of receiving, storing, or otherwise disposing of sewage, the Local Authority may construct works, purchase land, and enter into contracts, &c. (secs. 27—34).

Privies, Water-closets, &c.—No house may be erected or rebuilt without a sufficient water-closet, earth-closet, or privy, and an ash-pit properly fitted, under a penalty of £20. And if any house be erected without these conveniences, the Local Authority may, after notice to the owner or occupier to provide the same, proceed in default to construct them at the owner's expense (secs. 35—41). The same authority, upon complaint that any drain or closet is a nuisance and injurious to health, may cause their inspector to enter and examine the premises and, if necessary, cause all defects to be made good at the owner's expense.

Scavenging and Cleansing.—Every Local Authority may undertake or contract for the removal of house refuse and the cleansing of ash-pits, privies, cesspools, &c. Any person himself removing any part of such produce is liable to a penalty of £5, unless the same be wanted by him for sale or for his own use. Any Local Authority, who have undertaken this duty, are bound to remove and cleanse, &c., within seven days after notice in writing from the occupier of any house, or are liable to him in a penalty of 5s. per day. When the Local Authority do not themselves undertake the cleansing of foot-ways adjoining premises, or such removal or cleansing as above, they may make bye-laws imposing this duty upon the occupier. They may order the whitewashing,

&c., of any house in a filthy or unwholesome condition, or to check infectious disease. And any Urban Authority may proceed summarily against any one who keeps swine in a dwelling-house, or so as to be a nuisance, (see *Banbury L. Board v. Page*, Q. B. Dec., 1881, 51 L. J. M. C. 51), or suffers any stagnant water to remain in his cellar, or allows the contents of any privy or cesspool to overflow or soak away. Provision is made for preventing the undue accumulation of manure, &c., which, if not removed within 24 hours after notice, becomes vested in the Urban Authority, who may also order the periodical cleansing of stables, &c., under a penalty of 20s. per day (secs. 42—50).

Water Supply.—Any Urban or Rural Authority may provide their district with water, and are at liberty to construct water-works and dig wells—to lease or purchase water-works—or contract for a supply. For the above purposes certain ‘Waterworks Clauses Acts’ are incorporated.

When any house appears to the Local Authority to be without a proper supply of water, which could be furnished at reasonable cost, they may order the owner to obtain it, and in default may, at his expense, do what may be necessary for that purpose.

All public cisterns, pumps, wells, &c., are vested in and placed under the control of the Local Authority. And every Urban Authority is answerable for the provision and maintenance of all fire plugs, and the necessary machinery and assistance for securing an efficient supply of water in case of fire (secs. 51—69).

Public Health (Water) Act, 1878.—Upon this portion of our Act is engrafted the 41-2 Vict. c. 25, the key-note of which is heard in the following provisions:—‘It shall be the duty of every Rural Sanitary Authority . . . to see that every occupied dwelling-house within their district has, within a reasonable distance, an available supply of wholesome water sufficient for . . . the inmates’ (sec. 3). Power is given to enforce this accommodation upon the

owner accordingly, subject to his right of appeal to a Court of Summary Jurisdiction, or to the Local Government Board, according to the nature of the objection which he may raise to being thus accommodated. 'And it shall not,' the Act proceeds, 'be lawful in any rural district for the owner of any dwelling-house which may be erected after the 25th of March, 1879 . . . to occupy or permit the same to be occupied, until he has obtained from the Sanitary Authority of the district a certificate that there is provided within a reasonable distance of the house an available supply of wholesome water,' &c. Should this certificate be refused the owner may apply to two Justices, who, if of opinion that it ought to have been granted, may authorise the occupation of the house. Any owner occupying in defiance of the above clause is liable to a penalty of £10 (sec. 6).

Lastly, the Local Authority, if they have ground for believing that any occupied dwelling-house is without a proper water supply, may enter the premises and judge for themselves. And all the above duties and powers which are by the Act conferred upon Rural Authorities only, may, by order of the Local Government Board, be given equally to any Urban Authority (sec. 11).

Polluted Wells.—To return to the principal Act. 'On the representation of any person to any Local Authority that, within their district the water in any well, tank, or cistern, public or private, or supplied from any public pump, and used or likely to be used by man for drinking or domestic purposes . . . is so polluted as to be injurious to health, such Authority may apply to a Court of Summary Jurisdiction for an order to remedy the same.' This order may be made, upon summons, on the owner or occupier of the premises, if the well, &c., be private, or on any person alleged to be interested in the same, if public. And the Justices may direct the source of supply to be closed, or make such other order as may be requisite to prevent injury to health (sec. 70).

Cellar Dwellings.—No one may let or occupy separately

as a dwelling, any cellar, vault, or underground room, built after 11th August, 1875, or which was not so occupied at that date (in which case certain sanitary requisites must be complied with). Landlord and tenant of such apartment each liable in 20s. per day (secs. 71—75).

Common Lodging-houses.—Every Local Authority must keep a register of all such within the district, and of the number of lodgers authorised by them to be received. No person may keep such house unless registered. The Local Authority may make bye-laws for their proper management, and notice of infectious disease must at once be given to their medical officer (secs. 76—89).

Nuisances.—Various ‘nuisances,’ including foul drains, unclean animals, over-crowded houses, and furnaces emitting black smoke, are defined by the Act. The Local Authority are to cause periodical inspection to be made of their district, to ascertain what nuisances exist, and information of a nuisance may be given to them by any person aggrieved, or by any two householders, &c. Should such nuisance not be abated after due notice, the Local Authority must complain to a Justice, who will summon the person complained of before a Court of Summary Jurisdiction, who may require him to abate the nuisance within a specified time, or may prohibit its recurrence and direct the execution of works necessary for that purpose (*ex parte Saunders*, 52 L. J. M. C. 89), or may both require its abatement and prohibit its recurrence, and further impose a penalty not exceeding £5 with costs. Should the nuisance be such as to render a house unfit for human habitation, the court may prohibit its use as such until it has been rendered fit for that purpose. If the person by whose act or default any nuisance has arisen, or the owner or occupier of the premises, cannot be found, the order of the court may be addressed to and executed by the Local Authority. Complaint of a nuisance may be made direct to any Justice by any person aggrieved, or by any inhabitant or owner of premises within the district, and

the proceedings thereupon will be similar to those following a complaint by the Local Authority. 'The Local Authority or any of their officers shall be admitted into *any premises* for the purpose of examining as to the existence of any nuisance thereon,' &c., between 9 a.m. and 6 p.m. Any Justice may (if necessary) make an order for admission, which will continue in force until the nuisance has been abated or the work for which entry was necessary has been done. Penalty for refusal to obey order, £5. Provision is made in the matter of costs, &c., as between owner and occupier of premises (secs. 91—111).

Ships.—Every British ship (except on H. M. service) lying in any water within or adjoining the district of a Local Authority, is as much subject to its jurisdiction as if it were a house (sec. 110).

Offensive Trades.—Any person who, after the 11th of August, 1875, establishes within the district of any Urban Authority, without their consent in writing, any offensive trade, *e. gr.*, that of blood-boiler, fell-monger, tallow-melter, &c., is liable to a penalty of £50, and 40s. per day. When any business or process causing effluvia is certified to any Urban Authority by their medical officer, or by two medical men, or by ten inhabitants of the district, to be a nuisance or injurious to health, complaint is to be made to a Justice, and provision is made for the interference of a Court of Summary Jurisdiction (secs. 112—115).

Unwholesome Meat, &c.—Any Medical Officer of Health or Inspector of Nuisances may examine any meat, fish, vegetables, bread, milk, &c., 'exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and *intended for the food of man*' (proof that it was not exposed or deposited *for any such purpose*, or was not *intended for the food of man*, to lie upon the party interfered with; but it must be shown to have been 'exposed' or 'deposited,' so as to give some colour to the charge). And if any such meat, &c., appear to be unsound or unfit for food

of man, the officer or inspector may seize and carry away the same, to be dealt with by a Justice.

‘If it appears to the Justice that any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk so seized is diseased or unsound, or unwholesome, or unfit for the food of man, he shall condemn the same and order it to be destroyed, or so disposed of as to prevent it from being exposed for sale, or used for the food of man; and the person to whom the same belongs, or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding £20 for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour, or for the milk so condemned; or, at the discretion of the Justice, without the infliction of a fine, to imprisonment for a term of not more than 3 months.’ [See SUMMARY JURISDICTION, 4.]

The above proceedings are *ex parte* up to the destruction of the meat, &c., which is directed as an immediate and imperative sanitary precaution. If it be proposed to inflict a penalty, the defendant must be summoned and heard in his own defence, as a separate proceeding.

In the recent case of *White v. Redfern*, Dec. 2, 1879, 5 Q. B. D. 15; 44 J. P. 88, it seems to have been established—(i) that the Inspector, in the exercise of a ‘certain amount of judicial function,’ is the person to be satisfied that the meat was really intended for sale; (ii) that Justices are to content themselves with ascertaining its unfitness as food—in that case directing its destruction—without inquiry as to whether it was ever intended to be sold or eaten; (iii) that if the Inspector make a mistake as to this latter point, or if the meat turn out to be really wholesome, or if the owner can otherwise clear himself, the latter may claim compensation under the Public Health Act, sec. 308, page 390; see also *Vinter v. Hind*, Nov., 1882, 52 L. J. M. C. 93.

The Act provides a penalty of £5 for preventing the above

officers from entering any premises and inspecting any meat, &c., or for obstructing the performance of this duty, and enables any Justice to grant a search-warrant, resistance to which entails the heavier penalty of £20 (secs. 116—119).

Infectious Diseases.—Power is given under this head to any Local Authority to secure the cleansing and disinfecting of any house, and to destroy (with compensation) any infected bedding, clothes, &c. The removal of infected persons is also provided for. The following clauses are of general interest :—

‘Any person who, while suffering from any dangerous infectious disorder, wilfully exposes himself without proper precautions against spreading the said disorder in any street, public place, shop, inn, or public conveyance, or enters any public conveyance without previously notifying to the owner, conductor, or driver,’ &c., or

‘Being in charge of any person so suffering, so exposes such sufferer,’ or

Parts with or exposes infected clothing without disinfection, is liable to a penalty of £5.

Every owner or driver of a public conveyance must, after conveying any person so suffering, provide for its disinfection. He is not bound to carry any such person until he has been paid a sum sufficient for this purpose.

‘Any person who knowingly lets for hire any house, room, or part of a house, in which any person has been suffering from any dangerous infectious disorder without having such house, room, or part of house, and all articles therein liable to retain infection disinfected to the satisfaction of a legally qualified medical practitioner . . . shall be liable to a penalty not exceeding £20’ (secs. 120—128).

Lodgings.—‘Any person letting for hire, or showing for the purpose of letting for hire, any house or part of a house, who, on being questioned by any person negotiating for the hire of such house, or part of a house, as to the fact of there

being, or, within six weeks previously, having been therein, any person suffering from any dangerous infectious disorder, knowingly makes a false answer to such question, shall be liable, at the discretion of the court, to a penalty not exceeding £20, or to imprisonment with or without hard labour for not exceeding one month' (sec. 129).

Epidemic Disease.—Whenever any part of England is threatened or affected with any formidable epidemic or infectious disease, the Local Government Board may make regulations for the speedy interment of the dead—house to house visitation, &c., the execution of which is to be superintended by the Local Authority, with power of entry on any premises for that purpose (secs. 134—140); and see the 'Epidemic Diseases Prevention Act, 1883,' 46-7 Vict. c. 59.

Mortuaries. Dead Bodies.—Any Justice may, on medical certificate, order the removal to a mortuary, at the cost of the Local Authority, of a dead body from any house in which its presence endangers the health of the inmates, and may direct burial within a specified time, (secs. 141—143).

LOCAL GOVERNMENT PROVISIONS.

Highways.—Every Urban Authority is, within its district, exclusively to execute the office of Surveyor of Highways, and to exercise all highway powers which would otherwise have been vested in the vestry of any component parish.

All 'streets,' *i.e.*, highways (not turnpike roads), public (not county) bridges, roads, lanes, footways, square-courts, alleys, or passages, whether thoroughfares or not (sec. 149, and definition, sec. 4), being, or which may become, highways repairable by the public within any Urban District, are to vest in and be under the control of the Local Authority (see *Coverdale v. Charlton*, Q. B., May 21, 1878, 42 J. P. 517). The latter are also entrusted with extensive powers as regards the compulsory paving and lighting of private streets, the regulating the front line of houses, and the making of bye-laws with reference to the construction of new streets, and the

structure, position, and drainage of new buildings generally. And, where a plan of any proposed work is required by a bye-law to be laid before an Urban Authority, if the work be commenced after notice of their disapproval, or within one month without their approval, and is in any respect not in conformity with any bye-law, the Urban Authority may cause so much of the work as has been executed to be pulled down or removed (secs. 144—159).

Towns Improvement Clauses Act (10 & 11 Vict. c. 34).—The provisions of this Act are incorporated with the Public Health Act as regards naming streets, numbering houses, &c., and the compulsory removal of ruinous or dangerous buildings (sec. 160).

Ruinous and dangerous Buildings.—If any building, wall, &c., be deemed by the Surveyor of the Local Authority 'to be in a ruinous state, and dangerous to passengers, or to the occupiers of neighbouring buildings,' he is bound to give written notice to the owner (if known and resident within the district) and to cause a like notice to be affixed to the premises or otherwise given to the occupier, if any, requiring such owner or occupier forthwith to take down or secure such building, &c. And if owner or occupier do not begin to comply within three days, or delay to complete the work, he may apply to two Justices for an order upon the owner, or, in his default, upon the occupier, to perform it within such time as the Justices may fix. And in default, or if no owner or occupier can be found, the Local Authority are at once to make all secure at the expense of the owner, from whom repayment may be recovered under warrant of distress, (11 & 12 Vict. c. 34, secs. 75—6).

Police Regulations.—The provisions of the 'Towns Clauses Police Act,' which are given elsewhere under the head **POLICE** or **TOWNS**, are incorporated by sec. 171, so far as regards Urban Districts.

MISCELLANEOUS.

Arbitration.—In the event of any dispute as to the amount of compensation to be paid under the Act, and as regards the various matters which it directs shall be settled by arbitration, certain regulations (secs. 179, 180) must be attended to. All questions referable to arbitration may, when the amount at issue is under £20, be determined, at the option of either party, by a Court of Summary Jurisdiction (sec. 181).

Expenses in Urban Districts.—All expenses incurred by an Urban Authority are, generally speaking, charged upon and payable out of the 'district fund,' which is fed by the 'general district rate.' The latter, subject to certain exceptions, is leviable upon the occupiers of all property assessed to the poor rate. A 'private improvement rate' may be levied, in addition to all other rates, upon the occupier of premises in respect of which expenses declared to have been private improvement expenses may have been incurred. A highway rate may, under certain circumstances, be levied in aid of the general district rate. This rate need not be allowed by Justices (see HIGHWAYS), nor need any account of such rate be verified before them (secs. 207—228).

Expenses in Rural Districts.—The expenses incurred by a Rural Sanitary Authority are either general or special. The former are those which are properly payable out of the common fund, the latter those which form a separate charge upon each contributory place or parish. Both are payable by the overseers of the contributory district in response to the precept of the Local Authority, and are in point of fact charged upon the poor rate. All the provisions above noticed with reference to a private improvement rate leviable by an Urban Authority apply equally in the case of a Rural Authority (secs. 229—232).

Entry upon Lands.—Justices may, upon the application of any Local Authority, make an order authorising them to

enter upon or lay open lands or premises for surveying purposes, or for repairing or examining works, drains, &c., access to which is refused by the owner or occupier (sec. 305).

Obstructions to Local Authority.—Any occupier of premises preventing the owner from obeying any of the provisions of the Act may be ordered by any Justice to permit the execution of any required works under a penalty of £5 per day. A similar penalty awaits any occupier of premises who refuses to disclose the name of the owner, and any person who wilfully damages any property of the Local Authority, in cases where no other penalty is provided, is liable in the same amount (secs. 305—307).

Compensation for damage.—‘When any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the Local Authority’ (sec. 308): see *Pearsall v. Brierly Hill L. Board*, App. 1883, 52 L. J. (Q. B.) 529.

PUNISHMENT In our note on JUSTICES (p. 284) will be found some observations as to the *conviction* of accused persons, *i.e.*, upon the course of the preliminary question whether they are legally liable to be punished at all. *To what extent* they ought to be punished is frequently a problem of greater difficulty.

We have seen (pp. 5, 51) that the presence of at least two Justices is now essential to the infliction of punishment in any but its mildest form. The spirit of the recent Act is to throw every possible protection around the prisoner, and this provision was probably designed in his interest. That he may benefit by the arrangement in some instances is likely enough; but as a general rule the discretionary sentence of two Justices is apt to be more severe than that of one. It is far easier to deal out full measure to a prisoner when half the responsibility is taken off one's own shoulders. Moreover, the good-natured weakness which prompts many a

man when sitting alone to content himself with an easy sentence disappears to a marvellous extent in company. Depend upon it, every thief who knows his own good would rather have one judge than two. But there can be only one right sentence in any case, and the difficulty is to discover it. It may be impossible, *à priori*, to say how much money a man *ought* to pay for having mingled his milk with water, or harnessed a lame horse, or drawn his enemy by the nose ; but how much he *is* to pay is a sum to be worked out by the bench, and answered in shillings and pence. Whatever the figure arrived at, there should be as little haggling as possible about payment. A forfeit once imposed should, as a rule, be exacted, or the alternative enforced, without delay. Exceptional cases may occur often enough, but it is of the greatest importance that the proceedings of a criminal tribunal should carry with them a distinct impression of *power* in the eyes of those with whom we have to deal. It is for us to exhibit Justice in her sterner mood, and to mark a wide and imperious distinction between the infliction of a penal fine and the process of a Small Debts Court. Leniency has its proper place when we are considering the amount to be imposed. It may wear the guise of irresolute weakness when it fritters away a sentence once pronounced.

As regards the penalty itself, we should remember that among the labouring classes there is no loose money at command. The fine of a week's earnings represents a very real calamity, as well as hardships which are not borne by the offender alone. Moreover, the Justice in his easy chair is apt to forget that the people who appear so readily before him when their names are called may have undergone a vast amount of preliminary worry over the summons, let alone the loss of a day in attending court. There are cases in which this consideration may fairly be allowed some weight. Lastly, we should be careful how we drive people to prison by imposing fines which it is impossible that they should

pay. It may be out of the question to forego punishment altogether, or even to mitigate the fine, with a due regard to public justice. We must then face the matter fairly, and reluctantly leave them to be locked up. But in cases where we should never have resorted to imprisonment as the right retribution for their offence this is a hard necessity.

Imprisonment has its proper place as a menace for enforcing payment of fines, and as the fit and proper punishment of crimes of dishonesty, cruelty, malice, indecency, inexcusable violence, &c., as well as of various acts of recklessness which require to be summarily and sternly repressed. The effect of a sentence of this kind may vary almost infinitely according to the position, temperament and character of the person affected. Upon one man it may descend as a disaster of the most overwhelming description, uprooting his business, destroying his reputation, and involving little less than social ruin. By any one with the slightest degree of self-respect it is of course regarded with repugnance. To the thief or the tramp, on the other hand, it is simply one of the varieties of a troublesome existence—of a life infested on all sides by the demon of civilization. In this variable aspect it resembles the punishment more emphatically described as ‘corporal,’ the mere apprehension of which to a nervous man may be deadly torture, while his more stolid or resolute companion confronts it with defiance, as he would the pounding of a prize-ring.

Whether, under the circumstances of any particular case, imperative imprisonment is called for, instead of permitting the defendant to avail himself of the option of a fine, is often one of the most anxious questions which can affect the conscience of a bench. We may here notice that, under the Act of 1879. where the court has authority to impose imprisonment, but has none to impose a fine, the court may, at their discretion, impose a fine, not exceeding however (in any event) £25, (see p. 16). This provision applies to such cases as those under the Vagrant Act, where no punish-

ment other than imprisonment was originally possible. But it only applies where there is *no power to impose a fine*, and the principle might perhaps be usefully extended. In the case of a common assault, for example, a maximum fine of £5 may be imposed, or two months' peremptory imprisonment awarded. Therefore, when gentlemen exchange blows in what newspaper writers respectfully describe as a *fracas*, we must either content ourselves with exacting a 'fiver' from the aggressor, which he probably hands over with a smile, or send him at once to the House of Correction. The latter may be an outrageous punishment under the circumstances, the former is virtually no punishment at all. A slight modification of the clause in question would have enabled us to fix the penalty at a more disagreeable figure. Nobody likes to pay twenty pounds.

With these brief observations we must conclude the present note. The principles according to which punishment should be dealt out in each particular class of cases would require a far wider field. Every bench has its own traditions, its own mode of dealing with offence. 'Sentences are a lottery' is the compendious maxim of the criminal. And it is difficult in our perusal of reported cases—not only those decided by mere Justices, but by men in far loftier judicial station—to avoid fancying occasionally that we catch the meaning of this audacious creed.

PUNISHMENT OF CHILDREN. See page 115.

RACECOURSES LICENCING ACT, 1879. This Act (42-3 Vict. c. 18) extends to every place within a radius of ten miles from Charing Cross. After the 25th of March, 1880, it is declared unlawful to hold any horse-race within that area, except upon licenced ground. A discretionary jurisdiction to grant licences is given to Justices at the Michaelmas Quarter Sessions. Licences are to remain in force for one year, counting from the 25th of March following the application. Every applicant for a licence must be

the owner, lessee, or occupier of the land sought to be licenced; and his application must be made in the same manner as that for a music and dancing licence. For penalties incurred by contravention of the Act, see secs. 5, 6 and 7.

RAILWAYS. Under the 'Railway Clauses Consolidation Act, 1845,' an immense number of matters in connection with the making and management of these undertakings are referred for settlement to Justices. As regards these, we must refer to the Act. Under the Lands Clauses Act (8 & 9 Vict. c. 18), sec. 22, with reference *inter alia* to the construction of Railways, it is provided that in case of difference between the promoters of an undertaking and the owners &c. of lands required for or injuriously affected by its execution—whether as to the value of such lands or any interest therein or compensation to be made in respect of the same—then, if the amount claimed does not exceed £50, the question shall be settled by two Justices.

And, by section 121, if any mere tenant for a year or from year to year be required to give up possession before the expiration of his term, he shall be entitled to compensation for his unexpired interest, &c., and for any loss or injury he may sustain, the amount to be determined by two Justices.

Upon any such question as above, any Justice for the County, &c., may, upon the application of either party, summon the other to appear before two Justices to hear and determine the same, with power to examine the parties and their witnesses upon oath, 'and the costs of every such inquiry shall be in the discretion of such Justices, and they shall settle the amount thereof,' (secs. 3, 24).

We will now address ourselves to a few points in connection with railway bye-laws which are of interest to all the world as travellers, and to some of the more important railway offences with which Justices have occasionally to deal.

The power of railway companies to make bye-laws for the regulation of their traffic is conferred by the above Act, which

provides (sec. 109) that such bye-laws shall not be repugnant to law, or to the provisions of the Act itself, or to those of the Special Act of the company by which they are made. We shall see that the endeavours of railway companies to legislate for themselves under the above permission have been crowned with very indifferent success.

The well-known bye-law which provides that 'any person travelling without a ticket, &c., shall be required to pay the fare from the station whence the train originally started,' has been held repugnant to the spirit of the Consolidation Act, unreasonable, and therefore void, *L. and Brighton Railway v. Watson*, Appeal, Feb. 1, 1879, 4 C. P. D. 118.

Similarly, the rule which renders any person travelling in a carriage of superior class to that for which his ticket was issued, liable to a penalty not exceeding 40s., is clearly unreasonable and void, *Bentham v. Hoyle*, Jan. 24, 1878, 3 Q. B. D. 289, and, as such cannot be enforced even against a fraudulent traveller; *Dyson v. L. & N. W. R.*, Mar. 29, 1881, 7 Q. B. D. 32; and so is the regulation that a passenger must show or deliver up his ticket upon demand, under a like penalty, *Saunders v. S. E. R.*, 5 Q. B. D. 456.

A passenger who pays his fare to a given station, is entitled to be set down at any intermediate station, even though the fare to such latter station be higher than the fare to the more distant, *R. v. Frere*, 24 L. J. M. C. 68; and he is not, for this purpose or any other, bound by any special conditions indorsed upon his ticket, in the absence of proof that he assented to them, *Henderson v. Stephenson*, 32 L. T. N. S. 709.

In *Gabell v. S. E. R.*, Appeal, Ap. 25, 1877, 41 J. P. 644, which was a dispute as to efficacy of an indorsement upon a ticket issued at the 'left luggage office,' it was held that a traveller is not obliged to read his ticket. It is a question for a jury whether in point of fact he was aware that there was writing on the back of it, and knew or believed that such

writing contained conditions, in which case he would *primâ facie* be bound by them.

The 'Railway Traffic Act, 1874,' enacts that every company shall be liable for loss or injury to horses, &c., 'or to any articles, goods, or things,' occasioned by the neglect or default of the company or its servants, notwithstanding any notice given by them to the contrary. Provided that the company may make conditions which are just and reasonable, &c. A railway company issued a ticket from Boulogne to London, containing a condition that they would not be answerable for loss or injury to any luggage exceeding £6 in value. A box fell into the sea, through the negligence of their servants, and the contents were damaged to the extent of £70. It was held that luggage was within the meaning of the words 'articles, goods, or things,' and that the company could not limit their liability by any condition such as that printed upon the ticket, *Cohen v. S. E. R.*, 2 L. R. Exch. 253.

It is clear, however, that a railway company are under no liability as regards luggage or property of any description taken by a passenger with him in the carriage, and under his own control. Such property is at his own risk, even before the train starts, or while it may be stopping at a station, *Bergheim v. G. E. R.*, Appeal, 1878, 3 C. P. D. 221 ; 42 J. P. 324.

But when luggage is placed in the van, a railway company does not discharge itself from all further liability by the simple expedient of tumbling it out on the platform at the other end. They are bound to protect it until the passenger has a reasonable opportunity of claiming it. In *Patscheider v. G. W. R.*, Jan. 21, 1878, 3 Exch. D. 153, a box was thrown out in the usual fashion, and the plaintiff, a lady's maid, turned to look for the hotel porter, to direct him to carry it with the rest of her mistress' luggage to the hotel. The box was meanwhile picked up by somebody else. The jury found that there had been no delivery to the plaintiff, and the court refused to disturb their verdict. 'It is contended

for the company,' observed Mr. Justice Hawkins, 'that the plaintiff was guilty of contributory negligence in not keeping her eye on the box all the time. I do not agree with that view. She had other articles to look after, and seems to have used due diligence. I think the plaintiff was ready and willing *within a reasonable time* after the train arrived at the station to claim and take away her luggage, and the company did not keep it safely for her *until that reasonable time had elapsed*.'

In all actions for compensation brought against railway companies, it is for the judge to decide, in the first instance, whether there is any evidence of negligence upon their part *to be left to the jury*. The function of the latter does not commence until the judge is satisfied *that there is evidence which requires their consideration*, *Met. R. C. v. Jackson*, H. Lords, 37 L. T. N. S. 679.

OFFENCES.

1. (3 & 4 Vict. c. 97, ss. 13, 14). Any engine-driver, guard, porter, servant, or other person (5 & 6 Vict. c. 55, sec. 17), found drunk while employed upon the railway,—or committing any offence against the bye-laws or regulations of the company,—or wilfully or negligently doing, or omitting to do, any act, whereby life or limb may be endangered, or traffic impeded. Penalty, imprisonment not exceeding two months, with hard labour *or* fine not exceeding £10. The offender may be seized by any officer of the company, and the case dealt with upon complaint on oath, without information in writing, or may be sent for trial at Quarter Sessions.

2. (*Ib.*, sec. 16). Any person wilfully obstructing any officer, &c., in the execution of his duty, or wilfully trespassing upon any railway, &c., and refusing to quit upon request. Penalty not exceeding £5, and the offender may be arrested as above. No appeal.

3. (8 & 9 Vict. c. 20, ss. 103-4). Any person travelling or attempting to travel without having previously paid his fare, with intent to avoid payment. Penalty not exceeding 40s. Offender may be arrested as above.

4. (*Ib.*, sec. 105). Any person sending by railway any oil of vitriol, gunpowder, lucifers, or other goods in the judgment of the company of a dangerous nature, without distinctly marking their nature upon the package, or giving notice in writing. Penalty, £20. See also 29 & 30 Vict. c. 69.

5. (*Ib.*, sec. 109). Any person offending against any bye-law made by the company and duly confirmed. Penalty not exceeding £5, as imposed by the bye-law.

[THE FOLLOWING ARE INDICTABLE.]

6. (24-5 Vict. c. 97, s. 36). Whosoever shall by any unlawful act, or by wilful omission or neglect, obstruct or cause to be obstructed any engine or carriage using any railway—misdemeanour [impr. 2 y.].

7. (24-5 Vict. c. 100, s. 34). Whosoever shall (as above) endanger or cause to be endangered the safety of any person conveyed or being upon a railway—misdemeanour [same].

8. (24-5 Vict. c. 97, s. 35). Whosoever shall 'unlawfully and maliciously' (see page 84) place or throw upon or across any railway any wood, stone, or other matter or thing, or remove or displace any rail, sleeper, &c., or move or divert any points or machinery, or show, hide, or remove any signal or light upon or near any railway, or do any other matter or thing with intent to obstruct, upset, injure, or destroy any engine, carriage, or truck, or with intent (24-5 Vict. c. 100, s. 32) to endanger the safety of any person travelling or being upon such railway—felony [Pen. S. 5 y.—Life; or impr. 2 y.].

9. (*Ib.*, sec. 33). Whosoever shall unlawfully and maliciously throw, or cause to fall, at, against, into, or upon any engine, carriage or truck, used upon any railway, any wood, stone, or other matter or thing, with intent to injure

or endanger the safety of any person in or upon such engine, &c., or in or upon any other part of the train—felony [same].

Bail 'discretionary.' Offences 8 and 9 are not triable at Sessions.

RAPE. Charges of this description are by no means unfrequent, but the actual offence, at all events as committed *solo cum sold*, is probably extremely rare. No class of cases require more jealous vigilance upon the part of the Justice, as the real truth is generally known only to the parties concerned. On the one hand, familiarities of the most dangerous description are sometimes permitted by young girls, without the slightest idea of the ungovernable passions which they excite. On the other, a young man may easily misunderstand the extent of the invitation thus conveyed. Add to this that a woman, startled at the result of her own indiscretion, is extremely apt to throw the whole blame upon her companion, and is certain to do so should she be surprised at the critical moment, without at all reflecting upon the tremendous consequences of such an accusation. And a charge once made is not easily retracted. A case occurred in practice not long since which may be mentioned here, as suggesting a point or two worth notice.

A constable, about 1 a.m., had his attention attracted by a noise in a field, not far from a railway station. He proceeded to the spot, turned on his light, and found a young woman struggling with two soldiers under circumstances which (unless consent could possibly be supposed) left no doubt whatever as to the character of their offence. She was being forcibly held down, and one of them was endeavouring to smother her cries by thrusting his gloves into her mouth. She instantly gave them both into custody upon a charge of rape. The girl, it may be mentioned, lived in the village, and though known to be anything but a prude was not supposed to be anything much worse.

Now, if these men had been sent before a jury to be dealt with upon this evidence, they would assuredly have been on their way to Portland at this moment. Most fortunately for them, a witness came forward in the person of the platform signal-man. He had, by one of those strange coincidences which sometimes happen, remained at the station after his duties for the night were over and the last train had left. He was there only a few minutes before the discovery of the alleged outrage. The two soldiers and the young woman then came upon the platform, with the object of taking the rail to town in order to pass the night together. They were, of course, too late. To make our story complete, it ought to include the conversation which he overheard, and detailed to the bench. It would be a daring story if it did. There was no mistake about the amount of light which then dawned upon the matter. The policeman's evidence had been honestly given, no doubt; but it was all consistent with this explanation—that the girl only screamed at the sudden blaze of the bull's-eye approaching in the dark, while the dragoons, under a natural impulse, endeavoured to keep her quiet by choking her with gloves. Partly in sudden agitation, partly in indignation at being suffocated for the common good, she charged them both to the constable, and was afraid to retract the accusation afterwards. At any rate they were discharged after a most serious warning and having already been locked up for a week.

As regards the main moral of the story, comment would be superfluous. It may be allowed, however, to remind us how very slow innocent prisoners often are to see and enforce points in their own favour. A man often has in his hand the key to the whole mystery, and it never occurs to him to use it. He does not see the weak point in the chain of evidence against him; and yet its weakness may be only perceptible from his side.

More important still is it to remember how imperfect may be the most honest testimony as to facts about which it

scarcely seems possible that the witness should be mistaken. We must recollect that, after the event, a witness always in his own mind puts the whole affair together in the form of a story. Like any other story-teller he is bound to supply links ; and when he comes to repeat it in court, or one has to extract it by dint of cross-examination, it is these very links which make all the difference. The policeman at first told us that his attention was attracted by screams. But, upon subsequent sifting, this link had to be struck out of the chain. He had heard voices in the first instance ; but in telling the story to himself afterwards he had unconsciously assumed, from subsequent knowledge, that the sounds must have been signals of distress.

Rape is punishable with penal servitude for life. Not triable at Sessions. Bail 'discretionary.'

RATES. One of the earliest problems under the Summary Jurisdiction Act, 1879, was whether Poor and other rates recoverable under a merely ministerial warrant, issued by Justices without the necessity for any previous 'order' upon their part, were still to be recovered by the stringent and summary process stated below, or whether, under the new Act, they had not assumed the gentler aspect of mere 'civil debts' (page 44). The latter contention was promptly disposed of (*R. v. Price*, 5 Q. B. D. 300) upon the ground that Justices in issuing their warrant of distress for Poor rate did not sit as a court of summary jurisdiction, and were therefore untouched by the Act in question. The Act of 1884, sec. 7 (page 57), extends the definition of such a court, and, to guard against a renewal of the dispute, provides (sec. 10) that nothing therein shall alter the existing procedure for recovery of poor rate, &c., or of any rate the payment of which is not adjudged by conviction or order of a court of summary jurisdiction.

Poor rates are recoverable at petty sessions. Complaint is made by the proper officer to a Justice (not less than seven days after demand), who thereupon issues his summons to

the person in default to appear before two Justices. At the hearing, the making, allowance, and publication of the rate (see page 350), the rating of the defendant, and the demand for and neglect of payment, must be proved. No formal 'order' for payment is necessary, *the rate itself being the order*. A warrant of distress may be at once issued for realising the amount with costs. And in default of distress Justices may commit the person liable for not exceeding three months, unless the sum due, including the expense of conveying him to prison, be sooner paid. They may withhold the *issue* of the distress warrant should they see fit; but it is dated on the day of hearing, and held in suspense over the defaulter. Under the 45-6 Vict. c. 43, sec. 14, a Bill of Sale is in future to afford no protection against distress for taxes, poor or parochial rates.

As regards appeal against rates, see page 351. In cases where, as under the Public Health Act (sec. 256), the Court is authorised to *make an order* for payment, and, in default, to issue its warrant of distress, the Summary Jurisdiction Act applies, and the rates are recoverable as civil debts (see page 44). Highway rates, as already stated, are recoverable in the same manner as Poor rates.

RECEIVERS OF STOLEN PROPERTY. Any person receiving any chattel, money, or other property whatsoever, the stealing, obtaining, or embezzling of which amounts to a *felony*, either at Common Law or by virtue of the 24-5 Vict. c. 96 (as to this Act see LARCENY, EMBEZZLEMENT, and FALSE PRETENCES), knowing the same to have been feloniously stolen, &c., is himself guilty of felony (sec. 91). [Pen. S. 5—14 y.; or impr. 2 y., with whipping if a male under 16].

And, any person receiving any chattel, &c., the stealing, &c., of which is made a *misdemeanour* by the same Act, knowing the same, &c., is himself guilty of a *misdemeanour* (sec. 95). [Pen. S. 5—7 y.; or impr., &c., as above].

Triable either in the county or place where the property was actually received—or where the receiver had it in possession—or where the party guilty of the principal offence may be triable. Assizes or Sessions. Bail ‘discretionary.’

Receivers of stolen property, as above, may now, as we have seen (page 39), be dealt with in a summary manner.

And, where the stealing or taking of any property whatever is by the same Act *punishable on summary conviction*, any person receiving any such property, knowing the same to have been unlawfully come by, is liable, on conviction, to the same forfeiture and punishment to which the person stealing or taking such property is made liable by the Act (sec. 97).

It is important to observe that by the ‘Prevention of Crimes Act’ (34-5 Vict. c. 112, sec. 19), where proceedings are taken against any person as a receiver, evidence may be given *at any stage of the proceedings* that at the time when he was found in possession of the stolen property, there was also found in his possession other property stolen during the preceding 12 months, (*R. v. Carter*, C. C. R., Apr. 1884, 53 L. J. M. C. 96); and such evidence is relevant, and may be taken into consideration for the purpose of proving that he *knew* the property to which the charge relates to have been stolen. Evidence also may be given, under certain conditions and for a similar purpose, of a previous conviction, within five years, of any offence involving fraud or dishonesty.

This is as it should be. A man more than once detected trafficking in stolen property must be very unfortunate indeed if he do not deserve anything that may happen to him. There is no wickedness like that of the ‘Fence,’ who deliberately creates crime, and induces men bolder than himself to risk body and soul in order that he may fill his pockets out of property plundered from honest people. Contemptuous and unsparing severity is all that he need expect when he finds himself at last in the trap across which he has ‘systematically tempted others. ‘The rule I ventured to adopt many years ago,’ says the late Mr. Serjeant Cox in a work from which I

have already quoted, 'has been and is to award to the Receiver *exactly double* the amount of punishment given to the thief, at the same time stating the rule and the reason, so that they may be understood by the public. This strikes the imagination vividly and commends itself to the judgment of the community, whose approval of punishments is always to be desired, and who should understand the reasons which determine them.'

RECOGNISANCES. A Recognisance is, in legal phrase, an 'obligation of record,' which a man enters into before some court, magistrate, or officer duly authorised, conditioned to do some particular act, such as to appear at a certain time and place—to prosecute an appeal—to keep the peace, and the like. He may enter into this obligation either upon his own account, or as guaranteeing the act of another. It is so called, because it is, in point of form, the *recognition* or admission of an already existing debt; and, as such, is authenticated by the record of the court before which it is taken, and not by the seal or signature of the responsible party. The form, in fact, runs, 'I, A. B., acknowledge myself to owe [*or we, A. B. and C. D., each acknowledge ourselves to owe*] to our Lady the Queen the sum of £10, *to be void* if the said A. B. shall appear,' &c.

Should the condition be broken, the recognisance is liable to be estreated, that is to say *extracted* from the other records for the purpose of enforcement; the party and his sureties (if any) having thus become Her Majesty's absolute debtors, and liable in the sums in which they stood respectively bound.

Recognisances formerly could only be estreated at Quarter or General Sessions, to which they were transmitted for that purpose. This process has been rendered unnecessary by the Summary Jurisdiction Act, which provides (sec. 9) that whenever a recognisance is conditioned for the appearance of a person before a Court of Summary Jurisdiction, or for his doing some other matter to be done in any proceeding in

such court, the court, if of opinion that the recognisance is forfeited, may itself declare such to be the case, and may enforce payment of the amount due thereunder, by distress, as if the same had been a fine upon conviction.

Similarly, where a recognisance to keep the peace, or to be of good behaviour, or to do, or not to do, any act or thing, has been entered into by any person as principal or surety before any such court, the court, or any Court of Summary Jurisdiction for the same county, borough, or place, upon proof of the conviction of the principal of any offence amounting in law to a breach of the condition, may by conviction declare such recognisance to be forfeited, and adjudge both principal and sureties, or any of them, to pay the sums for which they may be severally bound.

All sums paid in respect of recognisances, declared forfeit as above, are to be received by the clerk of the court, and by him handed to the treasurer of the county, &c., in the same manner as sums are paid under Jervis' Act, see page 23.

REFORMATORY SCHOOLS. The Reformatory Schools Act, 1866 (29 & 30 Vict. c. 117), was a twin birth with the Industrial Schools Act already referred to. It is intended for the benefit of older offenders. The provisions generally as to the establishment, conduct, and supervision of these schools—as to the placing boys out on licence—apprenticing them, and the recovery of payment from the parent, &c., correspond with those in the other Act.

By sec. 14 it is provided that whenever any offender, who in the judgment of the court or Justices before whom he is charged is under the age of 16, is convicted either upon indictment or in a summary manner of an offence punishable with penal servitude or imprisonment and is sentenced to imprisonment for ten days or a longer term, he may be sentenced to be sent at the expiration of such period to a certified Reformatory School and there detained for not less

than two, nor more than five years. No child under 10 years is to be so sent, unless he has previously been charged with some offence punishable with penal servitude or imprisonment, or is sentenced by a Judge of Assize or a Court of General or Quarter Sessions. The religious persuasion of the offender is to be regarded, as in the case of children sent to industrial schools. There are at present 52 Reformatory Schools in England and 12 in Scotland, containing altogether about 6000 young persons.

REGISTER. Provision is made by the Summary Jurisdiction Act, 1879 (secs. 22, 23), for the keeping by the clerk of every divisional court of a Register of all convictions and orders of such court, each entry to be either made or signed by one of the Justices constituting the court. This Register, or a certified extract from its pages, is declared to be *prima facie* evidence of the matters entered, 'for the purpose of informing a court of summary jurisdiction acting for the same county, &c., as the court whose convictions, orders and proceedings are entered in the Register.' 'But nothing in this section,' continues the Act, 'shall dispense with the legal proof of a previous conviction *when required to be proved* against a person charged with another offence.' The clause is not very clear, and has given rise to some perplexity. There seems no doubt, however, but that the Register is intended to inform the court to which it belongs, as well as any other court, of the fact of a previous conviction, and that this information is *prima facie* evidence of such conviction—*i.e.*, evidence to be acted upon unless challenged by the party affected. Therefore, a person disputing a previous conviction (*e.g.*, upon the ground of its having been quashed, which would not appear upon the Register) may demand that it be legally proved by production of the certificate of the Clerk of the peace, (see page 15). Evidence of any security taken under the Act, whether from principal or surety may be supplied by an

entry either in the Register, or 'Security book.' See sec. 23, and Rules, 1880, No. 14.

Register of Licences, see page 267.

RESTITUTION OF STOLEN PROPERTY. In the dawn of society, the remedy (if any) of a man whose goods were stolen lay very much in his own hands. Provided he were big and active enough to tackle the thief and retake his property, or otherwise able to procure its restoration, the matter settled itself. But when society by degrees assumed the duty of dealing with theft as a public evil, and of catching and making examples of those who committed it, the mere recovery by an owner of what had been stolen became subordinate to a more important end. Any one may now-a-days, no doubt, take his property by main force from a thief. But he is bound to take the thief into the bargain; and it is a misdemeanour intentionally to let him escape. If the thief gets away with it, it is equally a misdemeanour to attempt its recovery by any means inconsistent with the duty of bringing him as rapidly as possible to justice (see **COMPOUNDING OFFENCES**); and if it gets into the hands of the law, through the agency of the police or otherwise, the owner has no right to it until he has fulfilled his obligation to society by prosecuting the offender. A gentleman, whose only set of artificial teeth had been stolen from his bed-side, suffered some time since from this rule (*a*).

(*a*) The following is a lady's complaint. It is from the pen of Lady Dufferin, grand-daughter of Sheridan, quoted in a recent number (55) of the 'Nineteenth Century.' She had been robbed of her wardrobe, and writes as follows:—'I find that the idea of personal property is a fascinating illusion, for our goods belong in fact to our country, and not to us; and the petticoats and stockings which I fondly imagined mine, are really the petticoats of Great Britain and Ireland. I am now and then indulged with a distant glimpse of my most necessary garments in the hands of different policemen; but 'in this stage of the proceedings' may do no more than wistfully recognise them Moreover the police and I have so long had my clothes in common that I shall

Any one, however, may peaceably or by legal process recover his stolen goods from a third party, and if he can anyhow contrive to regain possession of them without force or disturbance, the law not only justifies but favours the proceeding. The act of theft, which removed them temporarily from his *possession*, could not in the least degree affect his *property* in them, which remained exactly as before. Consequently, even an honest purchaser can set up no title as derived from or traced through a thief, and is bound to restore, without compensation, what the latter had no right to dispose of. Two innocent persons have been wronged, and one must bear the loss, in which hard state of affairs '*spoliatus debet ante omnia restitui*' is the maxim of the law.

To this doctrine there is one notable exception in the case of a *bonâ fide* purchaser in Market overt, who thereby obtains a title which is good as against all the world. He is protected by considerations of public policy, adverted to at page 314, which do not apply to dealings conducted in a more private manner.

Restitution upon Conviction.—The restitution of stolen property upon conviction of the thief is provided for by the Larceny Consolidation Act, 24-5 Vict. c. 96, s. 100, which enacts that if any person, guilty of any felony or misdemeanour mentioned in the Act, by stealing, embezzling, or knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted by or on behalf of the owner of the property, *and convicted*, such property shall be restored to the owner; but 'the language of this section applies, and is obviously intended to apply, to cases only in which *possession* has been obtained without the *property* passing'; per Lord Campbell, C.J., in *Moyce v. Newington*, (Dec. 20, '78) 4 Q. B. D. 32. And exception is

never feel at home in them again. To a virtuous mind the idea that Inspector Dowsett has examined into all one's hooks and eyes is inexpressibly painful. But I cannot pursue that view of the subject.'

made in the case of valuable securities and negotiable instruments which, after being stolen, may have been *bonâ fide* discharged by the person liable, or received by third parties for good consideration without notice ; see *Chichester v. Hill*, Dec. 1882, 52 L. J. (Q. B.) 160.

By the 30-1 Vict. c. 35, s. 9, it is further provided that where any prisoner shall be *convicted*, either summarily or otherwise, of larceny or other offence which includes the stealing of property, and it appears that he sold such property to any person who had no knowledge that it was stolen, and that any money has been taken from the prisoner on his apprehension, the court may, upon the application of such purchaser, and on the restitution of the stolen property to the prosecutor, order that out of such money the proceeds of such sale be delivered to the purchaser.

The former of these sections, therefore, does not affect holders of stolen property which has passed through Market overt. And such holders have no need to avail themselves of the latter.

In either case, if there be no conviction there is no foundation for an order. The court can do nothing to help the prosecutor. The constable in whose charge the property may be is not obliged to give it up, unless the claimant choose to give him a guarantee against the consequences. As regards goods in the custody of a constable within the Metropolitan Police District, see 2 & 3 Vict. c. 71, s. 29 ; and *Bullock v. Dunlap*, Exch., Nov. 15, 1876, 41 J. P. 56.

When an indictable offence is dealt with summarily, under the Summary Jurisdiction Act, 1879 (see page 39), the conviction has the same effect as a conviction for the like offence upon indictment ; and Justices may make the like order for the restitution of property as might have been made by the court before whom the person convicted would have been tried had he been indicted (sec. 27, sub-sec. 3).

As to restoring property to *accused persons*, see CONSTABLES, page 136.

RIOT. It cannot be too generally known that if *two or more* persons unite in any unlawful act against the peace, the probable consequences of which may be bloodshed—as, for instance, to commit an assault or to provoke a riot—their lives may depend upon the action of any one of them. For, if either or any of them chance to kill a man, the whole party are guilty of murder (see page 326). Moreover, if any *three* persons, either with or without common cause or quarrel, commit any unlawful act of violence in company, or even any lawful act (such as abating a nuisance) in a violent and overbearing manner, they are all answerable as rioters, and liable, upon indictment for the misdemeanour, to fine and imprisonment *ad libitum*.

Even the mere meeting of three or more persons with a view to the performance of an unlawful act, or under ‘circumstances of terror’ inherent either in their object or mode of assembling, although no overt act of violence be in fact undertaken, is an ‘unlawful assembly’ (see *Beatty v. Gillbanks*, 51 L. J. M. C. 117); while the fanciful name of ‘rout’ has been given in our text-books to the misdemeanour of beginning to riot.

Under the 24-5 Vict. c. 97, s. 11, if any persons, riotously and tumultuously assembled to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, &c., any church, house, out-house, warehouse, mill, &c., or any building used in farming land, or any machinery, &c., &c., each person present is guilty of felony, and liable, upon conviction at the Assizes, to penal servitude for life, or not less than five years, or to two years’ imprisonment. And, under the succeeding section, any mere injury or damage to a church, house, &c., thus perpetrated renders the whole assemblage liable, as misdemeanants, to penal servitude for from five to seven years apiece, or to the alternative of imprisonment for two.

This is sufficiently serious; but we now come to the Riot Act itself. This enactment (1 Geo. I. stat. 2, cap. 5), is only applicable in cases where persons to the number of

twelve or more, are unlawfully and tumultuously assembled to the disturbance of the public peace. Whenever this is the case, any Justice, sheriff, or mayor of a town may make proclamation in the form given below ; and any persons who, to the above number, presume unlawfully and tumultuously to remain together for the space of one hour after this warning, are guilty of felony, and liable, under the original enactment, to death, and at present to penal servitude for life, or for not less than fifteen years ; or to imprisonment for the unusually protracted period of three years.

Every Justice, be it observed, is *required*, on knowledge of any unlawful and tumultuous assembly within his jurisdiction, to 'resort to the place,' and there, among the rioters, or as near to them as he can safely come, after commanding silence, openly and with loud voice to pronounce these words :—

'Proclamation. Our sovereign Lady the Queen chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably depart to their habitations, upon the pains contained in the Act made in the first year of King George, for preventing tumults and riotous assemblies. God save the Queen !'

Any one obstructing the making of this proclamation (which is popularly known as 'reading the Riot Act') is guilty of felony ; and any persons continuing assembled with knowledge that it would have been read but for such hindrance, are just as liable as if they had listened to every word. They may, in any case, be arrested whether the hour has elapsed or no, although the full punishment is not incurred until that period has expired. Indemnity is extended by the Act in case any of the mob be maimed or killed in the endeavour to apprehend or disperse them. In extreme cases, the presence of a military force may be obtained, upon written application.

As regards the duty of Justices in view of *apprehended* riot, see Appendix XXIII page 475.

In case of actual or apprehended riot, Justices may order all licenced houses in the vicinity to be closed. See INTOXICATING LIQUOR LAW, page 274; and SPECIAL CONSTABLES.

Liability of Hundred.—Under the 7 & 8 Geo. IV., c. 31, if any church, house, mill, machinery, &c., be *feloniously* pulled down, demolished or destroyed, whether wholly or in part, by any persons riotously and tumultuously assembled, the inhabitants of the Hundred shall yield full compensation to the person damnified. The damage, if not exceeding £30, must be recovered summarily before two Justices in special sessions. But it is not every breakage of windows or doors, or other mischief however serious, which will render the Hundred answerable. The acts of the rioters must indicate that their object and purpose was to demolish the building, &c., altogether, in order to constitute their offence felonious, and within the meaning of the above clause: see *Drake v. Footitt*, Mar. 24, 1881; 7 Q. B. D. 201. As to the liability of the Hundred in respect of the plunder of a wreck, see 17 & 18 Vict. c. 104, sec. 477.

ROOKS being animals *feræ naturæ*, and not protected by statute, the killing and taking them upon the land of another is no criminal offence. Neither does any punishment attach to the trespass which is necessarily committed; the trespasser not being in pursuit of 'game.' The landowner, in short, has only his right of civil action, which in the way of redress is worse than useless. To the natural mind it may seem strange and unsatisfactory that the stealing a *dead* rook from a lawn or larder should be larceny, while the shooting the same bird on the top of my tree, and then running away with it, with all the attendant aggravation of trespassing upon private land, and disturbing a rookery, should be no criminal offence at all (*a*). Upon this point we

(*a*) Under the Birds' Protection Act, 1880, (see title) a man may now be punished (but not as a thief or a trespasser) for killing or taking rooks, except upon his own land, between the 1st of March and the

must refer to some remarks under the head of *GAME* (page 206), and to our note on *TRESPASS*.

But although the owner has no legal property in the birds, the nests are unquestionably his own, and any damage done to these may be punished, as, under the circumstances, direct and intentional. See *MALICIOUS INJURIES*, Offence 7. So also may any actual injury to the trees themselves; and the landowner, or any person by his direction, may apprehend the offender in either case upon the spot, and carry him before a Justice (see page 311).

Field mushrooms stand much upon the same footing as rooks, being of some value in themselves, yet (as not falling within the category of cultivated plants) unprotected by statute, and free to the first taker. The same may be said of water-cress in a brook, when not planted by hand.

RULES. Under the Summary Jurisdiction Act, 1879, the Lord Chancellor is empowered to make rules in relation to the forms to be used under the Summary Jurisdiction Acts, &c.; and the 'Summary Jurisdiction Rules, 1880,' have been issued accordingly. They contain provisions with reference to various matters which are adverted to, when necessary, elsewhere, and need not be epitomised under one head. See Summary Jurisdiction Act, 1884, sec. 12.

SEARCH WARRANT. This is an authority to the officer therein named to enter, by force if necessary, into some house or premises, which must be specially described, in order to search for and seize, if discovered, the particular property in respect of which it is granted. It may be issued upon any day, and executed, in case of urgent necessity, at any hour of the night.

Every Justice of the Peace has Common Law authority to issue such a warrant in respect of stolen goods within his

1st of August. For a first offence, however, he is only liable to be reprimanded, with costs.

own jurisdiction. But it must be founded upon information on oath by the owner or some person on his behalf, and the officer must be careful to seize no goods except those specified in the warrant.

The machinery of the search warrant has been adopted in many modern statutes. Thus by the 24-5 Vict. c. 96, s. 103 (see **LARCENY**), on proof on oath before a Justice that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property whatever on or with respect to which any offence punishable either upon indictment or summary conviction by virtue of that Act has been committed, the Justice may grant a warrant to search for such property, as in the case of stolen goods.

‘Whenever the issue of a search warrant has been specially provided for in respect of any particular class of offence, the fact will generally be found noted. For a form of the document itself, see Appendix, No. XVII.

SEEDS, ADULTERATION OF. Every person who, with intent to defraud, kills or dyes any seed, or sells or causes to be sold any killed or dyed seed is liable, on conviction before two Justices, to a penalty of £5. Subsequent offence, £50, and advertisement of offender’s name. Information within 21 days. Appeal. (32-3 Vict. c. 112.) No intent to defraud *any particular person* need be alleged or proved.

Killing seeds is defined to mean the destroying by artificial means of their vitality or germinating power. Dyeing seeds (under the amending Act, 41 Vict. c. 17) means ‘to apply to seeds any process of colouring, dyeing, or sulphur-smoking.’

SLAUGHTER HOUSES. Under the ‘Towns Improvement Clauses Act, 1847’ (10 & 11 Vict. c. 34), which is incorporated with the ‘Public Health Act, 1875,’ every person who, without licence from the Local Authority, uses any place as a slaughter-house or knacker’s yard, not so used

at and since the date of the Act, is liable to a penalty of £5, &c. (sec. 126). An Urban Authority may provide slaughter-houses and make bye-laws for their proper regulation. The owner or occupier of every 'Licensed' or 'Registered Slaughter-house,' must keep those words conspicuously printed up on his premises, under a penalty of £5, &c. (Public Health Act, secs. 169, 170). See page 147.

SOLDIER. The maintenance of a standing army in this country is, as we all know, a constitutional anomaly, and its existence is prolonged from year to year at the pure pleasure of the Commons, who not only consent to furnish the funds necessary for that purpose, but have hitherto, by an annual 'Mutiny Act,' authorised the only means of maintaining discipline in its ranks. The 'Army Act, 1881' (44-5 Vict. c. 58), which has been substituted for the Army Discipline Act of 1879, is designed to obviate the necessity for a complete Mutiny Act in every year. It is a dead model, capable of being galvanised into active existence by a short special Act, which will be passed annually and will define the term during which it is to continue effective. The following is a brief account of so much of it as concerns the Justice. It may be repeated that the provisions of the Summary Jurisdiction Act, with regard to reducing the prescribed amount of penalties, &c. (see page 16), do not apply to any proceedings taken under this Act.

Enlistment.—(Sec. 98). Any person who, without due authority, directly or indirectly interferes with the recruiting service of the regular forces is liable to a penalty of £20. Every person (sec. 80) authorised to enlist recruits in the regular forces must furnish a person offering to enlist with a notice in prescribed form, showing the general conditions of the contract, and directing the recruit to appear before a Justice of the Peace, or officer authorised to attest him [see Army Act, 1883, 46-7 Vict. c. 6, sec. 6].

Upon the appearance of a candidate for enlistment, the

Justice will ask him, in the first place, whether he assents to that step. [Should he not appear, or should he not assent to be enlisted, no further proceedings are to be taken.] If so, after cautioning him that any false answer will expose him to punishment, the Justice will read or cause to be read to him the questions in the 'attestation paper,' taking care that each question is duly understood; and, after ascertaining that his answers have been properly recorded, will require him to sign the declaration and administer to him the oath of allegiance contained in the paper. He will then attest by his signature the fulfilment of all requirements, and deliver the document to the 'recruiter,' for all which the fee of one shilling, and no more, is the reward of his clerk. A recruit, repenting of his bargain, may claim his discharge within three months after attestation on payment of £10 smart money. (sec. 81). But he will not be allowed to escape during a period of national danger or emergency when soldiers in army service who would otherwise pass to the reserve are required by Proclamation to continue with the colours. See sec. 88.

Any person knowingly making a false answer to any question contained in the 'attestation paper' and put to him by a Justice, is liable, upon summary conviction, to imprisonment with or without hard labour for not exceeding three months (sec. 99).

Exemption from Civil Process.—(Sec. 144). A soldier of the regular forces is not liable to be taken out of the service by process of any court of law or otherwise, or to be compelled to appear in person before any such court, except—(1) on account of a charge or conviction of crime; or (2) on account of a debt exceeding £30, clear of costs. The word 'crime' includes a felony, misdemeanour, or other offence punishable with fine or imprisonment, or greater punishment, but does not include the offence of absenting himself from civil service, or breaking a contract. All proceedings in or incidental to any process or order in contravention of this rule are simply

void. But any person having any cause of action against a soldier may, after due notice, proceed to judgment and have execution other than against the person, pay, or equipments of the defendant.

Liability to Maintain Family.—(Sec. 145). A soldier of the regular forces is liable to contribute to the maintenance of his wife and children, and also to the maintenance of any bastard child, to the same extent as if he were not a soldier, but execution will not issue against his person, pay, or equipments, nor is he liable to be punished for deserting or neglecting to maintain his wife or family, or for leaving them chargeable. And when any order is made for payment by any soldier of the cost of maintenance of his wife or child, or of any bastard child, a copy must be sent to the Secretary of State, who will order a sum not exceeding sixpence per day in the case of a serjeant, and threepence in that of any other soldier, to be deducted from his pay and appropriated in liquidation of his liability. See 46-7 Vict. c. 6, s. 7.

When any proceeding in a Court of Summary Jurisdiction is instituted against a soldier for the purpose of enforcing any such payment as above, and such soldier is quartered outside the petty sessional division, process is to be served on his commanding officer, and such service is not valid, unless there be left therewith a sufficient sum to enable the soldier to attend the hearing and return to quarters. No process whatever is valid if served after an order for embarkation on foreign service.

Deserters.—(Sec. 152). Any person who falsely confesses himself a deserter is liable, on summary conviction, to imprisonment for three months, with or without hard labour; and any person (sec. 153) who persuades or attempts to persuade any soldier to desert, or aids him in deserting, or conceals him afterwards, is eligible for six.

With respect to actual deserters (sec. 154)—

1. Upon reasonable suspicion that a person is a deserter, any constable, or, if no constable can immediately be met

with, any officer, soldier, or other person may apprehend him and bring him before a Court of Summary Jurisdiction. Or he may be arrested upon warrant; see 'Army Act, 1884,' 47-8 Vict. c. 8, sec. 6.

2. The court may deal with the case as if the accused were charged with an indictable offence.

3. The court, if satisfied by evidence on oath, or by the confession of the suspected person, that he is a deserter, may 'cause him either to be delivered into military custody in such manner as the court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for so delivering him.'

A reward of from 5*s.* to 20*s.* to the person apprehending a deserter, as well as all expenses incurred, (not exceeding a total of 40*s.*) will be paid by the War Office upon the certificate of the committing Justice.

Where a person confesses himself a deserter, but evidence of the truth or falsehood of such confession is not forthcoming, the prisoner should be remanded, and a 'descriptive return' (see form, Sched. IV.) transmitted to a Secretary of State. Remands of not exceeding eight days each may be made from time to time for this purpose.

Regimental Necessaries.—(Sec. 156). Any person who buys, receives, or takes in pawn from a soldier, on any pretence whatever, or who entices or assists a soldier to sell, &c., any arms, clothes, or stores in regimental charge, &c., unless he proves that he acted in ignorance of the same being such property, or of the person with whom he dealt being a soldier, is liable, on summary conviction (for a first offence) to a fine not exceeding £20, with treble the value of 'any property of which such offender has become possessed by means of his offence,' recoverable by distress. And where any such property is found 'in the possession' of any person (see sub-sec. 2), and a Court of Summary Juris-

diction have reasonable ground to believe that the same was either stolen or obtained in contravention of the above enactment, and such person fails to satisfy the court to the contrary, he may be fined £5.

Any person found committing an offence as above may be arrested without warrant, and any person to whom any such property is offered in the way of sale, pledge, &c., and who suspects it to be of such nature as above, is entitled, and (if he has the power) is bound to apprehend the party offering it. A search warrant may be issued where necessary.

ROUTE-MARCHING—BILLETING—HORSES AND CARRIAGES
(sec. 102, *et seq.*).

Before any portion of Her Majesty's regular forces can commence a march, in the course of which it counts upon assistance from the civil power, a 'route' must be issued through the Secretary of State, signifying the forces to be moved, and signed by the proper officer. This 'route,' when delivered to any soldier of whatever rank by his commanding officer, is his sufficient authority for demanding billets, carriages, &c.

The occupier of every 'victualling-house' is liable to receive soldiers on billet, the word 'victualling-house' including all inns, hotels, livery stables, ale houses, and establishments of persons selling wines, spirits, &c., by retail, subject, however, to various exceptions, which protect, among others, certain houses licenced for consumption 'not on the premises.'

Every constable in charge at any place in the United Kingdom mentioned in the 'route' is bound to billet upon the occupiers of victualling-houses and other premises liable in that place such number of officers, soldiers, and horses as are mentioned in the 'route,' and stated to require quarters.

The victualling-house keeper is bound to receive his guests and entertain them with food, lodging, and attendance at a fixed rate of payment. Should he feel aggrieved at having what he may consider an unfair number of men or

horses thrown upon his hospitality, he may apply to a Justice for redress (sec. 108). But he must not refuse to receive them, or to afford proper accommodation, or bribe the billeting constable, or pay out any soldier quartered upon him, on pain of a fine of not less than 40s. nor more than £5.

In the matter of carriages every Justice having jurisdiction in any place mentioned in a 'route' is bound, at the request of the commanding officer (sec. 112), to issue his warrant, requiring some constable to furnish, within a reasonable and specified time, such carriages, animals, and drivers as may be required for moving the regimental baggage and stores; and all persons having such carriages and animals fit for the purpose are bound to furnish them accordingly at a rate of remuneration fixed by the third schedule.

Every Court of General or Quarter Sessions in England may from time to time, as regards places within their jurisdiction, increase this rate by an amount not exceeding one-third (sec. 113). An order to this effect, which must specify the average price of hay and oats at the nearest market town, is not to continue in force for more than ten days after the next meeting of such authority, but may be renewed from time to time.

The police of any place may cause a list to be made out annually of persons liable to provide carriages and animals for the above purpose; and any one who considers that he has been improperly entered in such list may complain to a Court of Summary Jurisdiction, who will do what may be just in the matter.

In case of emergency, signified as such by a Secretary of State, a 'requisition of emergency' may be made by any general or field officer, under which Justices are bound to issue their warrants for the provision of carriages and horses of every description, whether kept for draught or saddle, and also of boats and barges upon every canal or navigable river. These vehicles, &c., may not only be used for the conveyance

of baggage and stores, but of officers, soldiers, and other persons belonging to the troops.

Any person lawfully ordered by any constable to furnish a carriage, animal, or vessel, who refuses or neglects to provide the same, or bribes the constable, or does any act by which the order may be delayed, is liable to a penalty of not less than 40s. or more than £10.

Heavy penalties are imposed upon any constable neglecting or exceeding his duty, as well as upon officers or soldiers committing any offence in relation to the impressment above authorised.

Every Justice (sec. 120) may, if it seem necessary, and, in the absence of a constable or other member of the police authority, is bound himself to exercise the powers and perform the duties as regards billeting and impressment of carriages which are by the Act vested in or imposed upon constables.

The provisions of this portion of the Act apply to H.M. auxiliary forces when subject to military law. (see secs. 175, *et seq.*), with certain modifications provided by sec. 181.

Legal proceedings.—(Sec. 166). ‘A court of summary jurisdiction, having jurisdiction in the place where the offence was committed, or in the place where the offender may for the time being be, shall have jurisdiction over all offences triable in a civil court under this Act,’ indictable matters excepted. Proceedings to be in accordance with the Summary Jurisdiction Acts, so far as applicable. Two Justices. A portion, not exceeding one-half, of any fine may be paid to the Informer. Otherwise, and subject to such payment, all fines go to the Exchequer. There is no power to mitigate fines or terms of imprisonment below the specified minimum (see page 16). As to cases, however, which are dealt with in an **occasional court-house**, see sub-section 4.

SOLICITORS. Any person falsely pretending to be, or using any name or description implying that he is qualified to act as a solicitor, is liable to a penalty of £10, recoverable

before two Justices. No solicitor is qualified to act without having a stamped certificate in force at the time (37-8 Vict. c. 68, s. 12). As to the appearance of solicitors as advocates at petty sessions, see PRACTICE, (4.)

No legal adviser, whether barrister or solicitor, is permitted, during or after his employment, unless with his client's express consent, to disclose any communication made to him in his professional capacity, or any advice which he may have given. This is not his own privilege, but that of his client. The furtherance of a criminal purpose, however, can never be part of his business; indeed, if he take any part in preparing or connive at a crime, he may be answerable as a conspirator or an accessory. No communication, therefore, made to him with reference to any existing criminal design is privileged. Thus, A., who had fraudulently acquired B.'s property, retained an attorney to prosecute him for alleged murder. Says he to the lawyer, 'I do not care if I spend £10,000 to get him hanged, for then I shall be easy in my mind.' This suggestive remark was held not to be privileged: *Annesley v. Anglesea*, 17 State Trials, 1223.

SPECIAL CONSTABLES. Under the 1 & 2 W. IV. c. 41, any two or more Justices, upon sworn information that any tumult, riot, or felony has taken place, or may be apprehended, within their Division, &c., if of opinion that the ordinary police force is not sufficient for the maintenance of order, may nominate as many as they shall think fit of the householders or other persons residing in the place or neighbourhood (not being legally exempt) to act as special constables for such time as they may consider necessary. Persons entitled to the Parliamentary franchise (see ELECTION) are, among others, legally exempt.

Any person appointed, refusing to be sworn in, or to appear when required, or disobeying orders, is liable to a penalty of £5 (secs. 7, 8). Penalty for assaulting or resisting a special constable in the execution of his duty, £20 (sec. 11).

Provision is made for defraying the expenses of special constables out of the county rate, or its equivalent, upon an order to that effect made by Justices in Special Sessions.

SPIRITS ACT, 1880. A consolidation of the law with reference to the manufacture, storage, and transmission of spirits was effected by this Act. It relates mainly to the actual business of the distiller. The penalties around this man's path are tremendous. Not less than ten of £500, and some five and twenty of £200 a-piece, may be counted in Part I. alone.

The following passages from various parts of 43-4 Vict. c. 24 deserve the attention of the Justice, as well as of the public at large.

Making Spirits. (Sec. 5).—No unlicenced person may have or use a still for distilling spirits. Penalty £500, with forfeiture of all utensils and materials.

Combining Trades. (Sec. 11).—The carrying on of a distillery business in connection with that of a brewer, vinegar maker, sugar refiner, dealer in wine, &c.; or even the working it upon premises communicating with those of a brewer, &c., otherwise than by the open street, is forbidden under a penalty of £200.

Dealers and Retailers. (Sec. 102).—A dealer, holding no retail licence, must not sell or deliver less than two gallons of the same kind of spirit at a time to any one person; and a retailer, unless also licenced as a dealer, must not sell or deliver spirits to a dealer or retailer, or buy or receive spirits from another retailer.

Permits and Certificates. (Sec. 105).—A dealer, holding no retail licence, must not send out spirits unless accompanied by an Excise certificate. Nor can he, in any case, send out more than one gallon at a time without this protection. Neither may spirits exceeding one gallon of the same denomination at a time be sent out by a retailer to any one person unless accompanied by a certificate.

‘Except as in this section (105) is provided, no spirits exceeding the quantity of one gallon of the same denomination at a time for the same person, may be sent out, delivered, or removed from any one place to any other place, unless accompanied by a permit.’

Many persons are probably unaware of this regulation. Few understand the significance of its quiet prohibition. To despatch a miniature keg of curious old Lochnagar, filled in one's own cellar, to some country cousin, appears an innocent proceeding enough. To most of us the notion of a ‘permit’ in connection with such a good-natured proceeding would seem as whimsical as that of a licence to play lawn tennis, or a passport for the Isle of Wight. Alas for the natives of that moated grange. One might as well have sent them a hamper of dynamite. ‘All spirits,’ continues the same section, ‘found to have been sent out, delivered or removed, or in course of being sent out, delivered or removed, in contravention of this section, together with all horses, cattle, carriages and boats made use of in conveying the same, shall be forfeited, and every person in whose possession the same are found shall incur a fine of £100.’ And (sec. 107) ‘if any person sends out, delivers, removes, or receives any spirits required to be accompanied by a permit without a permit, he shall, in addition to any other penalty or forfeiture, incur a fine of £500.’

Any officer of Inland Revenue, moreover, may stop and detain any person found carrying or removing spirits, and examine the same (sec. 145). Penalty on not forthwith producing a permit, should the quantity exceed one gallon, £100. Penalty on withstanding the officer by force, or proposing to him to overlook the offence, £500.

Observe in conclusion that (unlike certain other Indulgences) a permit once granted must be made use of. If found to be unnecessary, it may indeed be restored to the proper officer; but to pitch it into the fire is punishable under section 107 with a fine of £500.

Methylated Spirit. (Sec. 126).—No retailer of this description of spirit may sell to any person more than one gallon at a time. To prepare or attempt to prepare it for use as a beverage is punishable, under section 130, by a fine of £100. The retribution is not extreme. There is a fearful secret about the flavour of wood naphtha, and the doom of those who mingle it with drink of man should not be light.

Hawking Spirits, &c. (Secs. 146-8).—‘If any person hawks, sells, or exposes to sale any spirits otherwise than in premises for which he is licenced to sell spirits,’—or ‘knowingly sells or delivers, or causes to be sold or delivered, any spirits to the end that they may be unlawfully retailed or consumed,’—or ‘receives, buys, or procures any spirits from a person not having authority to sell or deliver the same,’ he is liable to a fine of £100. Any person may arrest the hawker.

STAMPS. No person may deal in stamps without a licence (33-4 Vict. c. 98, sec. 7), and any person hawking stamps of any kind for sale, whether licenced to deal in them or not, is liable to a penalty of £20 (sec. 11). There is an exception in favour of persons employed by the post-office, who are permitted to carry and sell postage-stamps. Any person fraudulently removing *any adhesive stamp*, or using it a second time, is liable to a penalty of £50 (33-4 Vict. c. 97, sec. 25). The above penalties are not summarily recoverable. See also as to fictitious stamps, 47-8 Vict. c. 76, sec. 7). As regards stamps on documents, see page 69.

SUICIDE, which is termed self-murder by Blackstone, is felony, but not murder: *R. v. Burgess*, 32 L. J. M. C. 55. It seems, however, that if two persons mutually agree to destroy themselves, and one of them effects his object, the survivor will be answerable for murder. We no longer pursue the suicide with the posthumous vengeance of mutila-

tion and midnight burial where four ways meet. The attempt, however, is a Common-Law misdemeanour, punishable as such at Sessions. But it is not usual to commit for trial. The deed sometimes is one of the indications of insanity, and to be dealt with accordingly. Or it may have been prompted by some special cause, which enables the bench to judge how far it is likely to be repeated. There will probably be a week's remand, followed by a report from the Chaplain and Medical Officer of the House of Detention. Should these be favourable, the Justices, if satisfied that the accused will pass into proper keeping, may perhaps allow him or her to depart in charge of friends or relatives, or may require sureties for good behaviour during a certain period.

As regards the burial of persons 'against whom a verdict of *felo-de-se* shall be had,' see the '*Interments (felo-de-se) Act, 1882*,'—45-6 Vict. c. 10. The forfeiture of land and goods incidental to such a verdict was renounced in 1870.

SUMMARY JURISDICTION. We will put together in a few words the main points to be borne in mind, when dealing with offences thus triable, having regard to the changes in procedure brought about by recent legislation.

1. Punishments, as declared by statute, will frequently be found indicated within crotchets, the maximum penalty being that stated. Thus [*£5, or 2 m.*] means a fine not exceeding *£5* ; or imprisonment (with hard labour, if ordered) for not more than two months, in default of payment. But, in point of fact, the alternative maximum of imprisonment, except as showing the intention of the Act, and the extreme limit within which hard labour can under any circumstances be enforced, may now be virtually disregarded. Justices are to order such a period as, in their opinion, will *satisfy the justice of the case*, in no case exceeding that authorised by the scale in paragraph 7 below. A *£5* fine (including costs) for example, although associated as above with the possibility

of two months' imprisonment, will only carry *one* month at the outside.

Where no term of alternative imprisonment is authorised by the statute under which conviction takes place the fine must be recovered, or attempted to be recovered, by distress, see page 18; unless the court be satisfied that the offender has either no goods, or that distress would work greater injury than sending him to prison, see page 19; in which case he may be imprisoned at once, as if a warrant had been issued and no goods found. But in this case, and in all cases where imprisonment is not authorised by the statute and merely takes place in default of sufficient distress, hard labour must form no part of the sentence. In dealing with each separate subject throughout the volume we have pointed out whether imprisonment or distress is the proper alternative of non-payment.

2. As regards the mitigating power now possessed by the court, in respect of the diminution of fines and prescribed terms of imprisonment, and the power of commuting the latter punishment, even when expressly appointed, for a pecuniary penalty—all which relaxations may be made, whether in the case of Revenue proceedings or otherwise (military matters only excepted),—see Preliminary Notes, page 16. A child under twelve cannot, *under any circumstances*, be imprisoned, upon summary conviction, for more than one month, or fined more than forty shillings (sec. 15).

3. As regards the power to give time for the payment of fines, to allow the same to be paid by instalments, and to accept security for the amount, see page 17. No fine which does not exceed five shillings, unless the court think fit expressly to order otherwise, is to carry costs from the defendant; and the court (unless they expressly order otherwise) are to direct all fees payable by the informant in such case to be remitted or repaid to him; and may also order the fine, or any part of it, to be paid to him towards his costs (sec. 8).

4. The words 'two Justices' or 'one Justice' have been generally retained, where these are employed in the Act creating an offence. But 'a pound or a fortnight,' the former including costs, is the extent of punishing power now possessed by *one* Justice, or even by two or more unless when sitting in a petty sessional court-house. As regards the recently imposed conditions with respect to the *place* of hearing, see page 5. The rule of 'open court,' as there defined, applies, under sec. 20, to *cases* which require to be 'heard, tried, determined, or adjudged.' Its exact scope will be settled sooner or later, in the course of practice; but it obviously does not apply to a multitude of matters and transactions which are not 'cases' in any possible sense of the word.

5. It is to be recollected that a person charged with an offence for which he is liable to be imprisoned for more than three months, and which is not an assault, must in all cases be warned, *before the charge is gone into*, that he may claim, if he pleases, to go before a jury (sec. 17). See page 13.

6. Whenever a Court of Summary Jurisdiction think that, *although a charge is proved*, the offence in that particular case was of so trifling a nature that it is inexpedient to inflict any, or more than a nominal punishment, they are at liberty to take the course provided by section 16: see page 37.

7. The period of imprisonment to be imposed in respect of the non-payment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy such sum, is, notwithstanding any enactment to the contrary in any past Act, to be such as, in the opinion of the court, *will satisfy the justice of the case*; but is *not to exceed*, in any case, the maximum fixed by the following

SCALE.

Amount.	Maximum Period.
Not exceeding 10s.	seven days.
Exceeding 10s., but not exceeding £1	fourteen days.
Exceeding £1, but not exceeding £5	one month.
Exceeding £5, but not exceeding £20	two months.
Exceeding £20	three months.

Such imprisonment is to be without hard labour, except where hard labour is imposed by the Act on which the conviction is founded, in which case the imprisonment may, *if the court thinks the justice of the case requires it*, be with hard labour, so that the term of hard labour awarded do not exceed the term authorised by such Act. It is provided (sec. 53) that where the sum adjudged by conviction under any statute relating to Inland Revenue or Customs exceeds £50, the period of imprisonment, as above, may exceed three but must not exceed six months. As regards imprisonment upon complaint, see pages 44, 45.

8. As regards indictable offences triable summarily, see Preliminary Notes, Chapter V.

9. It should be understood that there is now, generally speaking, a right of appeal in all cases where imprisonment is ordered, without the option of a fine (unless under the Summary Jurisdiction Act itself). See page 71.

10. Under the head PRACTICE will be found Notes upon the following points: (1) Non-appearance of Defendant, (2) Non-appearance of Plaintiff, (3) Waiver of Irregularity, (4) Counsel, (5) Court, how far Open—Contempt, (6) Adjournment, (7) Witnesses, (8) Alteration in Sentence, (9) Giving time for Payment of Fine, (10) Sureties of the Peace, (11) Justice Interested, (12) Criminal Intention, (13) Ouster of Jurisdiction by Claim of Right, (14) Res Judicata.

SUMMONS. The nature and object of this instrument have been described at page 10. See also PRACTICE (1), (3), and Appendix II. Formerly, in cases where the defendant did not appear, it was necessary that the person who served the summons should attend in court, and depose upon oath to the fact and manner of service. Under the Summary Jurisdiction Act (sec. 41), service of any summons, notice, process, or document may now be proved by a solemn declaration, taken before a Justice, or otherwise as prescribed.

Process between England and Scotland.—Under the 11 & 12 Vict. c. 43, (Jervis' Act) a *warrant of arrest*, as we have seen at page 11, might and may be despatched to and executed in any corner of the United Kingdom, subject to certain formalities as regards 'backing' when beyond the jurisdiction of the issuing Justice. A summons, however, whether in respect of an Information or Complaint, was only available within England and Wales, while a subpœna or witness summons was, until 1880, confined within still narrower limits. By the 'Summary Jurisdiction (Process) Amendment Act, 1881,' (44-5 Vict. c. 24) it is provided (secs. 4, 8) that any summons or subpœna, warrant of commitment, warrant of imprisonment, warrant of distress, order, or other document or process (other than a warrant of arrest, as to which further provision was unnecessary) issued, under the Summary Jurisdiction Acts, by a court of summary jurisdiction in England, and endorsed by a like court in Scotland, or *vice versâ*, 'may be served and executed within the jurisdiction of the endorsing court in like manner as it may be served and executed within the jurisdiction of the issuing court, and by an officer either of the issuing or of the endorsing court.' Such endorsement may be made upon proof of the handwriting of the issuing Justice, given either upon oath or by declaration as above. No warrant for the apprehension of any person summoned in respect of an Information or Complaint is to issue until the court is satisfied upon oath that there is *primâ facie* evidence in support of the case. No process to procure the attendance of a witness is to issue unless the court be satisfied in like manner that his evidence would be material, and that he would not appear voluntarily. The Act does not apply to any summons to answer a complaint in respect of a 'civil debt.'

SUNDAY. The prohibitions in force with reference to the public observance of Sunday begin with the first statute

of King Charles I. It enacts that no persons shall assemble out of their own parishes for any sport whatever on Sunday ; nor, within their parishes, use any bull or bear-baiting, plays, or other unlawful exercises, on pain that every offender shall pay 3s. 4d. to the poor. This enactment, as Blackstone observes, does not prohibit but rather impliedly allows any innocent amusement within the parish, even on the Lord's day. By 29 Charles II. c. 7, *work* in general is expressly forbidden ; including the use of any boat or barge. The result is that a cricket-match on Sunday, which would be the scandal of a county, remains perfectly legal, while a simple *promenade sur l'eau*, after church, which need imply neither desecration nor disregard of the day, exposes every one of the party to summary conviction, with fine and imprisonment in default of payment. Unluckily, however, for the informer, he cannot, even with the best intentions, commence proceedings unless with the consent in writing of the chief officer of police, or of two Justices or a stipendiary magistrate, which latter, if consenting parties, are incompetent to hear the case. 'Sunday Observation Prosecution Act,' 1871.

The following offences are within the 29 Charles II. c. 7. One Justice may convict. Information within ten days. No appeal.

1. (Sec. 1). Any person, over 14, being a tradesman, artificer, workman, or labourer, or the like [a farmer is not within the Act], doing any worldly business, or work of his ordinary calling, upon the Lord's day —works of charity and necessity excepted [5s., one-third to informer, residue to poor of parish].
2. (*Ib.*). Any person crying or selling goods [goods forfeited].
3. (Sec. 2). Any person using any boat, wherry, or barge, except upon an extraordinary occasion, to be allowed by a Justice [5s., one-third, &c.].

The provisions in sec. 1 do not extend to dressing meat, &c., in families, or in cook-shops and inns, nor to crying milk and mackerel at proper times, nor to hackney coach-

men. Pawnbrokers are specially forbidden to pursue their calling on Sunday under a penalty of £10. As regards Bakers, see BREAD. No public-house may be open, except during specified hours. See INTOXICATING LIQUOR LAW, page 271. Killing any description of game is punishable with a fine of £5; and a similar penalty attends the taking of any salmon, except with rod and line.

Under the 21 Geo. III. c. 49, 'any house, room, or other place, which shall be opened or used for public entertainment or amusement, or for publicly debating on any subject whatsoever, upon any part of the Lord's day called Sunday, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place, and the keeper of such house, room, or place shall forfeit the sum of £200 for every day that such house, room, or place shall be opened or used as aforesaid on the Lord's day, to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses.'

As to the power of the Crown to remit forfeitures incurred as above, see 38-9 Vict. c. 80. Under this Act, the Home Secretary recently remitted the penalties recovered in *Girdlestone v. Brighton Aquarium Company*, 'being of opinion that the changes which he understands have been introduced by the Aquarium Company in the opening of that establishment on Sundays are such as to render it unobjectionable on the score of public morality, while it is a source of innocent and instructive amusement; and being unable, as at present advised, to see any valid reason for their being interfered with' (Sep. 3, 1879). These are significant words.

No judicial act can be performed on a Sunday; and a summary conviction on that day would be bad on the face of it. Under the 11 & 12 Vict. c. 42, s. 4, however, a Justice is empowered to issue a warrant on that day for the apprehension of any person charged with having committed an indictable offence, &c., or a search warrant; and this of course implies

the power of receiving the necessary information, as well as authority to the constable to execute the warrant. But no summons can be served, and no ordinary warrant executed on a Sunday, except a warrant issued in respect of a breach or apprehended breach of the peace. Any arrest, however, which may be made without warrant may be made as well upon Sunday as on any other day.

In the computation of time—as where an act is required to be done within ‘three’ days—Sunday is counted as one, unless it is expressly excluded.

SURETY OF THE PEACE. Any Justice, by virtue of his commission, may require this security, within his jurisdiction, of any person, other than a peer, according to his own discretion. He may, for example, at once ‘bind over all those to keep the peace who in his presence make any affray, or contend together with hot and angry words.’ Or he may exact it *at the request of any subject* having reasonable grounds to apprehend that another intends to do him, or his wife or child, any bodily injury. Previously to the year 1880 the course of procedure upon a request of this kind was at once anomalous and unfair. If the allegations, as deposed to upon oath, were in the opinion of the Justice *prima facie* sufficient, he issued his summons or his warrant against the person complained of. The latter was then desired to show cause why he should not give security to keep the peace. He was gravely assured that he was not by this proceeding ‘put upon his defence,’ and that, consequently, his own version of the matter was foreign to the purpose. He stood there as mere matter of precaution, and not for punishment. He was neither at liberty to contradict nor to reply to the tale told by the other. He might indeed show, if he could, that the whole proceeding arose from malicious motives, or explain anything ambiguous in the charge itself. Otherwise the sole question for the Justice was whether the one-sided story was probably true; and, if so, whether there

seemed sound reason for the complainant's going in fear. In the result the person complained against might be ordered to find substantial security for his future harmlessness, or be placed beyond the possibility of doing mischief for twelve months by the sentence of a single Justice.

It is now provided by the Summary Jurisdiction Act (sec. 25) that 'the power of a court of summary jurisdiction, *upon complaint of any person*, to adjudge a person to enter into a recognisance, and find sureties to keep the peace or be of good behaviour *towards such first-mentioned person*, shall be exercised *by an order upon complaint*, and the Summary Jurisdiction Acts shall apply accordingly; and the complainant and defendant and witnesses may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint.' And that 'the court may order the defendant, in default of compliance with the order, to be imprisoned for a period not exceeding, if the court be a petty sessional court (see page 4), six months, and, if other than a petty sessional court, fourteen days.'

It is obvious that many questions may arise under the above enactment which will have to be discussed and determined before the practice can be considered as settled. The Act, it will be observed, applies in terms to proceedings taken 'upon the complaint of any person.' These proceedings are to be carried out in the manner applicable to complaints in general. It is at least doubtful whether a single Justice is competent to determine such a case (see page 5), while to require the attendance of a second might easily lead to worse than inconvenience in particular instances. A more serious difficulty has been suggested, namely, that the original application cannot perhaps be followed by an immediate warrant (see page 43), a step which forms an important feature in the established system. Without going into the arguments on either side, we may observe that the main and plain object of the Act was to provide that a question of this description

should be fairly tried out between the parties, and that a defendant should no longer be told that he was only bound over by way of precaution, and desired to hold his tongue. It would indeed be an unfortunate concomitant were Justices to be deprived of the power of instant and effectual interference in urgent cases, which are by no means so unfrequent as many people suppose.

There seems to be no doubt but that even a non-petty sessional court may exact security for a twelvemonth, although in default of compliance with their order they can only imprison the defendant for fourteen days.

The section above cited is followed by the strange provision (sec. 26) that 'where a person has been committed to prison by a court of summary jurisdiction for default in finding sureties, *any petty sessional court for the same county, borough, or place*, may, on application made to them in manner directed by a rule made in pursuance of the Act (see Rule 16, Form 40), by him or by some one acting on his behalf, inquire into the case of the person so committed; and if upon new evidence produced to such court, or proof of a change of circumstances, the court think, having regard to all the circumstances of the case, that it is just to do so, they may reduce the amount for which it is proposed that the sureties or surety should be bound, or dispense with the sureties or surety, or otherwise deal with the case as the court may think just.'

To allow a petty sessional court to review and, if necessary, modify its own order would have been well enough; but to invite the bench of an adjoining Division to intermeddle was surely inconsiderate.

As regards the undertaking itself into which the defendant may be required to enter, see **RECOGNIZANCES**. The sum will be such as the court may think reasonable, having regard to the circumstances of the case and the social position of the parties. It is usual, when two sureties are required, to bind the principal in twice the amount for which these are

each made liable. When there is only one surety he is generally bound in the same sum with his principal. A person committed for refusing to be bound, or as being unable to find sureties, may be discharged at any time during his imprisonment upon satisfying these conditions.

Should the person called upon to give this form of security be dissatisfied with the order, he may take a case stated before the Court of Appeal ; or, if in custody, he may cause himself to be brought up upon habeas corpus. But the question in either case will be, not whether the Justices exercised their discretion amiss, but whether the allegations upon which they proceeded were sufficient to give them jurisdiction.

There seems to be no objection to an infant being thus bound ; but it is otherwise with a married woman, who is usually required to find security among her friends. The party bound must pay the fees for his own recognisance ; and the Justice's clerk is not bound to make it out without his money. Consequently, if he cannot or will not pay, he goes to prison.

It is matter of daily practice to call upon a defendant to enter into his recognisances, &c., upon a charge of assault, instead of proceeding to a conviction ; and this without any formal application upon the part of the prosecutor. The same course may be taken after a charge has been dismissed, and even concurrently with a conviction : see *Ex parte Davies*, 24 L. T. N. S. 547, which is sometimes cited to the contrary.

Surety for Good Behaviour. — This may be required under the 34 Edward III., which empowers Justices 'to bind over to their good behaviour towards the king and his people all them that be not of good fame, wherever they be found,' an expression which, as Blackstone observes, is 'of so great latitude as leaves much to be determined by the discretion of the magistrate himself.' It may be required of rioters, common breakers of the peace, of those who abuse or insult officers of justice in the execution of their duty, and in cases of aggravated defamation ; but not for mere

rash, quarrelsome or unmannerly words, unless they amount to a challenge, or directly tend to a breach of the peace. Recognisances of the peace are usually drawn so as to include good behaviour generally. Recognisances in respect of the above matters can only be enforced upon *conviction* of the party bound, for some offence which is in law a breach of the conditions. As regards their estreatment generally, see RECOGNISANCES.

SWEARING. The 19 Geo. II. c. 21 was directed against the 'horrid, execrable, and impious practice' of profane swearing; which, it is hinted in the preamble, may have had a good deal to do with the troubles of the preceding year (1745).

Every day-labourer, or common soldier or sailor, profanely cursing or swearing forfeits, for the first offence, one shilling to the poor of the parish—every other person, not a gentleman, 2s.—and every gentleman 5s. *for each oath sworn*, with all charges of conviction, recoverable before one Justice within eight days. If the swearing were in the presence of a Justice, he was, previously to the Summary Jurisdiction Act, 1884, not only authorised but *required* to convict the party upon the spot, without any other proof whatsoever. An information showing that the defendant 'did profanely curse one profane curse, to wit, &c., twenty times in succession' may be supported, and the defendant convicted in the full cumulative penalty; *R. v. Sott*, 33 L. J. M. C. 15. The above Act was ordained to be read in church once a quarter—an infliction which was dispensed with in the days of George IV. See also POLICE OF TOWNS, page 348.

TAXED CARTS. Possibly not one lawyer in twenty, if suddenly asked the meaning of the word 'tax-cart,' would be prepared with a rational answer. The fact is that, under an obsolete statute of Geo. III. certain vehicles of the cart class, without springs, and otherwise of an undesirable description, were allowed at a reduced rate of duty (see *Williams v. Lear*,

41 L. J. M. C. 76). These were called taxed carts; *i.e.*, taxed as carts—not as carriages. The phrase has been popularly transferred, on the *lucus a non lucendo* principle, to a class which, under the 32-3 Vict. c. 14, s. 19, pays no tax at all. It comprises every ‘waggon or cart, or other vehicle used solely for the conveyance of any goods or burden, in the course of trade or husbandry,’ and whereon the owner’s name and abode or place of business are legibly painted, in letters not less than one inch in length (see DRIVING. AND RIDING, page 158). The object of this Note is to point out that these vehicles must be used exclusively, or at least primarily, for the conveyance of goods. A farmer or tradesman is by no means at liberty to employ his cart for purposes of pleasure, or to look upon it in the light of a gig. A ginger-beer dealer, in October, 1878, who had been summoned to the Clerkenwell Police Court upon some complaint of the Excise authorities, brought his witnesses with him in his one-horse van. The case went against the Inland Revenue, who, rather shabbily it must be owned, retorted by demanding the defendant’s ‘carriage licence.’ He was fined in the mitigated penalty of £5.

TENANT REMOVING DISTRAINABLE GOODS. Any tenant or lessee fraudulently or clandestinely carrying off the premises his goods and chattels to prevent the landlord from distraining for rent *then due*, is liable, under 11 Geo. II. c. 19, to pay double the value of the goods removed: recoverable by the landlord (when *value* under £50) before two Justices. The rent, as above intimated, must be in arrear, and ripe for distress, when the offence is committed. The Act does not apply to the goods of a stranger or a lodger. Tenant and person assisting may be jointly charged in one information, and are each liable to pay the double value.

The goods may be seized by the landlord, wherever found, within 30 days; unless previously sold *bond fide* to an innocent purchaser. See *Gray v. Stait*, May, 1883, 52 L. J. (Q. B.) 412.

THEATRES. Beyond the jurisdiction of the Lord Chamberlain, application for a theatrical licence must be made in writing to the Justices of the division, district, or place. It must be made by the actual and responsible manager [of the building] and countersigned by at least two Justices of the division, &c. The licence may be granted at a special session to be held within 21 days after the delivery of such notice, and of which session seven days notice has been given to each Justice. It must be under the hands and seals of at least four of the Justices present. It must be signed and sealed in open court and publicly read by the clerk. Justices are empowered to make rules for insuring order, &c., and to bind over the manager, with sureties, in heavy recognisances for their due observance (6 & 7 Vict. c. 68). The premises must be structurally suitable.

A stage-play is defined by the above Act to include tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage. See *Wigan v. Strange*, 35 L. J. M. C. 31, where a 'dagger-dance' was held to be (fortunately) not sufficiently like the ordinary events or actions of human life to constitute it necessarily a stage-play.

Any person keeping an unlicensed place for the public performance of stage-plays is liable to a penalty of £20 a-day, recoverable before two Justices (*ib.*, sec. 2); see *Shelley v. Bethell*, Nov., 1883, 53 L. J. M. C. 16. Every person acting 'for hire' in any play performed in *any unlicensed place*, is liable to forfeit £10 a-day; or £50, if the piece has not been allowed by the Lord Chamberlain. Acting 'for hire' is defined to mean acting where any money is taken directly or indirectly for admission, or where the play is performed in any place in which distilled or exciseable liquor is sold.

The Act does not apply to any theatrical representation in any booth or show, which shall be allowed by Justices, at any lawful fair or feast.

It follows from the above that no private and unlicensed theatricals for any charitable purpose are possible (see Lor-

TERIES); and that they must not be indulged in even among friends, and for mere amusement, at any hotel. Justices have no power to relax the rule which warns the red spectre of a stage-play to his legitimate temple. A paternal Legislature has held with Horace—

‘*Segnius irritant animos demissa per aures
Quam quæ sunt oculis subjecta.*’

We may talk but must not ‘act.’

It may be noted, as matter of curiosity, that the jurisdiction of the Lord Chamberlain extends over London and Westminster, &c., and to wherever Her Majesty or her successors may occasionally reside; and that it is not lawful to open any theatre, although duly licensed by Justices, at any place in which she may happen to be resident, without his lordship’s authority.

THREATENING LETTERS. The tremendous penalties which attach to threats, or attempts at extortion, made by pen and ink, are by no means generally known. It is felony to send a letter threatening to kill any person (24-5 Vict. c. 100, s. 16), or to burn any house, barn, stacks, &c., or to kill or maim cattle (24-5 Vict. c. 97, s. 50). Triable at Sessions. [Pen. S. 5—10 y.; or impr. 2 y. with whipping, if a male under 16.] Bail ‘discretionary.’

It is felony of deeper dye to send a letter demanding with menaces, and without reasonable cause, any money or property whatsoever (24-5 Vict. c. 96, s. 44); or accusing, or threatening to accuse, of any offence punishable with death, or with penal servitude for not less than seven years; or of any attempt to commit rape; or of advances towards more detestable crime, with a view to extort money or its equivalent (*ib.*, sec. 46). Not triable at Sessions. [Pen. S. 5 y.—Life; or impr. 2 y. with whipping as above.] Bail as above. See LIBEL and ACCUSING OF CRIME.

TIME, COMPUTATION OF. Generally speaking, where an act is required to be done within (say) three days after the happening of an event, the day on which the event happened is to be excluded, and the day on which the act is done is to be included, in the computation of time. Thus an Information laid on Monday is 'within three days' after the happening of an offence committed on the previous Friday. Sundays are not distinguished from other days in this reckoning, unless indeed the time be limited to 24 hours, in which case Sunday is not counted. But when an act is required to be done three days 'at least,' or 'not less than' three days before or after a given event, it is equivalent to saying that three clear days must be completed between the one date and the other. The word 'month' in a statute means *primâ facie* a calendar month, in computing which the day of the month corresponding with the day from which time begins to run is not to be included. Thus a notice given on the 28th of April was held to have been given 'one calendar month at least' before the commencement of an action on the 29th of May.

The law it is said will not notice fractions of a day, which is true as regards certain judicial proceedings as well as in other instances. An illustration occurs in the very ordinary process of 'coming of age.' A lad whose twenty-first birthday happens on Wednesday is held to be of age during all that day, no matter at what hour he may have been born. Consequently, his nonage must expire on the last instant of Tuesday. Consequently, as he is not a minor at that last moment, he is not a minor at any period during the day. Consequently, directly the clock strikes 12 on Monday night he is of age to all intents and purposes.

A sentence of imprisonment must be reckoned from the first moment of the day on which it is passed; *Migotti v. Colville*, Dec. 7, 1878, 4 C. P. D. 233; 43 J. P. 143. Consequently a prisoner committed for seven days on Saturday must be set free before midnight on the following Friday.

The law, however, is not so wayward as to disregard the sequence of events, or the ordinary time of day as told by the clock. Under the intoxicating liquor laws, by which half the hours of the 24 are consecrated to the opening or shutting of one door or another, it was held until very recently that these observances must be conducted with reference to local time, as determined by the meridian of the particular public house. But this inconvenient necessity was obviated by the 43-4 Vict. c. 92, which enacts that any expression of time in an Act of Parliament, deed, &c., shall, unless otherwise stated, be held to refer to Greenwich or Dublin mean time, as the case may be.

It may be as well to point out that in computing the time within which an Information must be laid or a Complaint made (see pp. 9, 43), the statutory period does not necessarily begin to run, in the case of a *continuing* offence, from what may be considered as its commencement, nor, in the case of a money claim, until payment has been duly demanded and refused. In proceedings for highway damage occasioned by extraordinary traffic (see page 241) it runs from an intermediate period, viz., neither from the date of the damage nor that of the demand, but from the rendering of the surveyor's certificate; *Pool v. Gunning*, 51 L. J. M. C. 49.

TRESPASS. The mere act of trespass upon another man's land, whether enclosed or otherwise, or even the entering his dwelling-house uninvited, either by day or night, is not in itself criminally punishable, being matter in which 'the King and the public have no interest.' The remedy is by civil action alone. In order to constitute a criminal offence, there must be some attendant circumstances of aggravation. It is scarcely necessary to refer to the case of 'housebreaking,' where the mere fact of trespass is lost in the felony; but the intrusion may have taken place in a manner amounting to, or calculated to provoke a breach of the peace; or it may have been in defiance of some distinct rule, such as that

which protects a railway or guards the precincts of a powder-magazine; or with a forbidden object, as by entering another man's land without permission, in pursuit of game; or the trespasser may have brought himself within the scope of the well-known clause which provides that whenever a person is found in any dwelling-house, stable, enclosed yard, garden or area, Justices, if of opinion that he was there *for any unlawful purpose*, may commit him as a rogue and a vagabond for three months' hard labour (see VAGRANTS, 20). It is obvious that this enactment, which is penal and despotic to the last degree, ought to be construed strictly in favour of the person suspected or accused. We must by no means confound its provisions with those noticed at page 369, nor the being on the spot for an unlawful purpose with the being there without any lawful purpose at all. The evidence must point to the former conclusion, and a man must not be criminally convicted, merely because he had no business to be where he was found. 'It is not enough,' said Cockburn, C.J., 'that there be an immoral or an improper purpose. The person must be not only violating a civil right, but he must intend to commit a public offence, such as is contrary to the criminal law of the land,' *Hayes v. Stevenson*, 3 L. T. N. S. 296.

Quite recently, a gentleman, having left his town-house in charge of a maid-servant, was disconcerted by the information that a man was constantly seen to enter it at night by the area steps. He accordingly returned late one evening with proper assistance; and upon searching the premises, found his visitor under the young woman's bed. The charge was heard and dismissed by one of the Metropolitan Police Magistrates, who observed that there was no evidence of the prisoner's having been in the house for an unlawful purpose, and that the object of his visit was plain enough. The applicant (owing to his previous ignorance of the law of trespass) 'appeared surprised at the decision.'

The civil action of trespass, above referred to, is, in ordinary cases, a mere mockery of redress, since, unless some

substantial injury be proved, the plaintiff can recover only nominal damages ; while, even if costs be given, he will have to pay his own bill, unless the defendant happen to be worth powder and shot. The court will certify for costs whenever it is of opinion that the trespass was ' wilful and malicious,' as where the defendant acted for the sake of annoyance or after sufficient warning. The ordinary placarded notice that ' Trespassers will be prosecuted,' is of no avail.

Any person may expel a trespasser from his field or garden, and *a fortiori* from his house, but he must employ no more force than is necessary for the purpose. And he is by no means justified in treating a person as a trespasser, and laying hands upon him then and there, for no better reason than that he did not ask him to walk in. An Englishman's house is his castle, but he has no right to eject by main force, without parley, people who come upon honest business, at proper hours, and in peaceful guise. A man, however, who had legitimate excuse for his original entry, may render himself a trespasser *ab initio* if he misconduct himself afterwards, or refuse to depart upon request.

It may be noticed, in connection with the above, that Justices are not authorised to determine any case of assault in which a question arises as to the *title* to and right to enter upon any lands, &c., whatever may have been the amount of violence used. It is for them to decide whether there really was an open question of the kind ; and, if expedient, to commit the accused for trial. See PRACTICE, 13.

TRUCK ACT. To pay one's workmen in goods instead of cash, and put one's own price upon the goods, was a stroke of manufacturing policy so simple and so sound that, when once invented, it soon became popular. The object of the Truck Act (1 & 2 Will. IV. c. 37) was to protect the workman from this device, and to prevent him, for obvious reasons, from contracting himself out of the right to have his wages paid in money. It applies to artificers and workmen engaged in

iron-works, collieries, quarries, and brick-fields ; in hardware business and metal-working ; in spinning, weaving, bleaching or dyeing ; and in the manufacture or preparation of pottery, porcelain, glass, and lace. Domestic servants and servants in husbandry are not within the Act.

Subject to certain exceptions as regards medicine, food consumed on the premises, lodgings, and some other matters which, under a written agreement to that effect, may be legally supplied and charged against wages, the Act provides that any contract in which the whole or any part of the wages is made payable otherwise than in current coin, or in which any provision is made, directly or indirectly, respecting the place where, the manner in which, or the person with whom any part of the wages are to be laid out or expended, shall be absolutely void ; and that the entire amount of the wages shall be paid in coin, and not otherwise ; and that any payment made by the employer by delivery of goods, or otherwise than in coin, shall be also void. And that the artificer may recover so much of his wages as shall not have been actually paid in coin, and that the employer may not set off the value of any goods supplied by him, or at any shop belonging to him, or in which he has an interest, nor shall any action lie to recover the value of such goods. The case of a weaver who had been forced to take a piece of cloth, which had been damaged by himself, in lieu of its value in wages, was recently held to be within the Act, *Smith v. Walton*, Nov. 30, 1877, 3 C. P. D. 109 ; 42 J. P. 280.

Any employer, in a trade to which the Act applies, directly or indirectly entering into any contract, or making any payment declared to be illegal, is liable, *for a first offence*, to a penalty of not more than £10 nor less than £5 (see page 16), recoverable before two Justices within three months. Any portion may be awarded to the informer. Balance to county treasurer. No appeal.

VACCINATION. The parent of every child born in England is bound, within three months after its birth, to have it vaccinated either by the public vaccinator of the district or by some medical practitioner. When the operation has been performed by the public officer, he must return with the child in a week's time, in order that the result may be ascertained and the operation repeated, if necessary. Penalty for neglect, without reasonable excuse, not exceeding 20s., recoverable by distress (30-1 Vict. c. 84, ss. 16, 17, 29).

Upon information from the vaccination officer that any child, within his district, under 14, has not been successfully vaccinated and that the parent has disregarded a notice to have it done, any Justice may summon such parent to appear with the child, and may order it to be vaccinated within a certain time. Penalty for not producing child or disobeying order, not exceeding 20s. as above (30-1 Vict. c. 84, s. 31, and 34-5 Vict. c. 98, s. 11). The parent may be summoned and the order repeated as often as necessary within twelve months of the original notice, after which a second notice must be given.

Any person, who by reason of the death, absence, &c., of the parent, has the custody of an unvaccinated child born in England, must, within three months after receiving it, perform the duties as regards vaccination otherwise imposed upon the parent. A defendant may appear by any person authorised by him. 'Inoculation' is summarily punishable by imprisonment not exceeding one month. The Local Government Board may make rules prescribing the duties of guardians in enforcing the law (37-8 Vict. c. 75). See General Order, Oct. 31, 1874.

It is obvious that the vaccination law, which is for the common good of all, and is binding upon all alike, should be impartially and firmly enforced. Perhaps there is no subject upon which recusants are more noisy and unreasonable. Assuredly there is none in which argument is more obviously out of place. So long, however, as the 'Anti-compulsory

Vaccination Society' issues its manifestos, so long will Justices find martyrs to punish. One is almost ashamed to copy such rubbish as the following extract:—'IT IS A TRUTH that syphilis, cancer, scrofula, and other loathsome diseases, are transmitted by vaccination. IT IS A TRUTH that since the general enforcement of vaccination by a system of terrorism, the average deaths from six diseases alone which chiefly affect infants have increased 60,000 per annum. IT IS A TRUTH that vaccination neither prevents nor mitigates small-pox. Persons desirous of protecting their children from this Herodian edict, this legal infanticide, should join and subscribe,' &c.

Yet these are the pleas to which Justices are constantly invited to listen, these are the grounds upon which they are invited to disregard the plainest possible duty. Probably a lurking distaste for compulsion is in most cases at the back of the grievance.

VAGRANTS. The Vagrant Act, 5 Geo. IV. c. 83, was designed for the discouragement of that class of persons who wander about the country with no fixed place of abode, no desire to enter upon honest labour, and no legitimate means of protracting their idle and apparently useless existence. An old statute of King Edward III. had long previously struck at the root of the evil. '*Quid multi validi mendicantes laborare renuunt, vacando otii et peccatis, quandoque latrociniiis; nullus, sub pœnâ imprisonmenti, talibus qui commodè laborare poterunt, sub colore pietatis vel elemosine dare, seu eos in desidîâ suâ confovere, presumat: ut sic compellantur pro vitæ necessariis laborare.*' It was as vain, however, to forbid foolish people to squander demoralising alms as to forbid the tramp to pick and steal. Hence the statute of King George. 'Gipsies,' says Mr. Serjeant Cox, 'were the special objects aimed at, and therefore the provisions against fortune-telling, by palmistry and otherwise, which was their special calling. This very questionable Act,' he continues

(‘Principles of Punishment,’ page 212), ‘is a criminal statute, highly penal, investing Justices with a somewhat unconstitutional power; and therefore, if the slightest doubt exists as to its construction, they should refrain from exercising their summary power of imprisonment. Happily for the liberty of the subject, the Superior Courts, when appealed to, have very properly construed this despotic Act according to its obvious intent, and peremptorily rejected attempts, by ignorant or injudicious magistrates, to extend it beyond its manifest scope. In a recent memorable case, the Court of Queen’s Bench sternly and at once refused to construe the fortune-telling clause as extending to conjuring and sleight of hand, holding that the general words, “or other device,” are to be read as *ejusdem generis* with palmistry and the acts expressly prohibited, which are obviously the various forms of fortune-telling. Justices, therefore, should be very cautious in exercising their jurisdiction under this last relic of the penal legislation of our ancestors, and certainly the most arbitrary and unconstitutional law yet lingering in the statute book. . . . It should be construed, as all penal statutes are to be construed, strictly *against* the statute, and in favour of the defendant. Every word is to be read in its most restricted meaning, and no meaning is to be strained for any purpose whatsoever.’

Vagrants are divided into three classes, namely, Idle and disorderly persons, Rogues and Vagabonds, and Incorrigible Rogues.

Under the above Act any person whatsoever may apprehend, without warrant, any person ‘found committing’ any of the offences below, and carry him before a Justice, or deliver him to a peace-officer for that purpose. Any constable refusing to take such charge, and any person hindering him in so doing, is liable to a penalty of £5. Idle and disorderly persons may be convicted by a Justice upon his own view. And, upon information on oath that a vagrant of any of the above classes is known or suspected to be in any house

kept for the lodging of travellers, any Justice may by warrant authorise any person to enter at any time into such house and apprehend such person (36-7 Vict. c. 38, s. 13). Any money found upon a vagrant may be applied towards the expenses of his arrest and imprisonment. All cases of vagrancy may be dealt with summarily by one Justice : see, however, SUMMARY JURISDICTION, 4. Appeal to General or Quarter Sessions, see page 73.

Idle and Disorderly Persons.—The following offenders are punishable, as such, with one month's hard labour (5 Geo. IV. c. 83, s. 3), or by a fine not exceeding £5 (see page 16) with imprisonment as per scale, page 428, but without hard labour, in default :—

1. Person able to maintain self or family becoming or leaving them chargeable to parish or union (sec. 15). This includes the case of a woman neglecting to maintain her bastard child (see 7 & 8 Vict. c. 101, s. 6), but does not apply to the case of a man whose wife has left him and committed adultery. Nor can any one be said to be *found offending* under this section.
2. Person returning to and becoming chargeable to any parish, &c., from whence legally removed ; or pauper, removed at instance of guardians of union, returning within twelve months (28-9 Vict. c. 79, s. 7).
3. Pedlar, &c., trading without licence, see PEDLARS.
4. Prostitute behaving riotously or indecently in public : *i.e.*, not merely making overtures, &c. See *R. v. De Ruiter*, Midd. Sess., Jan. 31, 1880 ; 44 J. P. 90.
5. ' Person wandering abroad, or placing himself in any public place, street, highway, court, or passage to beg or gather alms.'
6. Person causing child under 16 to do so.
7. Applicant for workhouse relief falsely denying possession of money (11 & 12 Vict. c. 110, s. 10), or pauper, or other person giving a false name or making false

statement in order to obtain relief (page 357, and see 45-6 Vict. c. 36, s. 5).

Rogues and Vagabonds.—Punishable, as such, with three months' hard labour (sec. 4) : or by a fine not exceeding £25.

8. Any person committing any of the above offences, after having been convicted as an idle and disorderly person.
9. 'Person pretending or professing to tell fortunes, or using any subtil craft, means, or device, by palmistry or otherwise, to deceive and impose' (page 448).
10. Wandering abroad and lodging in any barn or outhouse, &c., or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself.
11. Exposing in any street, public place, shop, &c., any obscene print, or other indecent exhibition.
12. Exposing person in public with intent to insult any female, see *INDECENCY*.
13. Wandering and exposing wounds, &c., to obtain alms.
14. Endeavouring to collect alms under any false or fraudulent pretence.
15. Running away and leaving wife, &c., chargeable to any parish, &c.
16. Woman leaving bastard child chargeable (7 & 8 Vict. c. 101, s. 6).
17. 'Playing or betting by way of wagering or gaming in any street, road, highway, or other open and public place, or in any open place to which the public have or are permitted to have access, at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of such wagering or gaming, at any game or pretended game of chance' (sec. 4, extended by 36-7 Vict. c. 38, s. 3). It has been held that a carriage travelling on a railway is an open and public place within the meaning of the Act; *Langrish v. Archer*, 52 L. J. M. C. 47.
18. Having in possession any pick-lock, crow, bit, &c.,

with intent feloniously to break into any house, &c. See **HOUSEBREAKING**, 4, for this and the following offence, when committed *in the night*.

19. Being armed with any gun, cutlass, bludgeon, &c., or having any instrument with intent to commit felony.
20. Being 'found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any enclosed yard, garden, or area, for' any unlawful purpose.' (N.B.—The person must be not only violating a civil right, but he must intend to commit a criminal offence. See **TRESPASS**.)
21. Suspected person or reputed thief frequenting any river, dock, quay, place of public resort, &c., street or highway, or place adjacent to any street or highway, with intent to commit felony [there or elsewhere. It is not necessary to prove any particular act evidencing such intent, if, from the circumstances of the case and the person's known character, the court be satisfied that it existed, 34-5 Vict. c. 112, s. 15].
22. Any one apprehended as an idle and disorderly person, violently resisting constable, if convicted of the offence for which apprehended.

Incorrigible Rogues.—This forms the third and culminating gradation of Vagrancy (sec. 5), and comprises—

23. Person convicted as a rogue and a vagabond, having previously been convicted as such.
24. Person committed under this Act and escaping.
25. Person apprehended as a rogue and a vagabond, violently resisting constable, if convicted of the offence for which apprehended.

The punishment in the three last cases is by committal to the House of Correction until the next General or Quarter Sessions with hard labour. Such courts may further imprison with hard labour for not exceeding one year, with whipping in the case of a male.

VIVISECTION. The late Sir William Fergusson, in his evidence before the Royal Commission, said that he would not go to the length of restraining rational men from doing what they thought necessary in experiments upon living animals. It is unfortunately impossible to restrain men who are not rational upon this disagreeable subject from delivering themselves of a great deal of nonsense about it. The Bishop of Peterborough said well when he declared in the House of Lords (July 15, 1879) that if surgeons could not try certain experiments upon live animals they would infallibly try them upon living patients; and that we have as much right to extort from animals the prolongation of our own lives by means of acquired knowledge, as by turning them into plain food. 'Among a certain class of persons,' observed Dr. Pye Smith, at the late meeting of the British Association, 'opposition to physiological experiments appears to spring from what may fairly be stigmatised as sentiment—that is to say, excitable rather than deep feeling, uncontrolled by reason. People first gratify their fancy by calling hares and horses their fellow-creatures, which, in one sense, undoubtedly they are; and then by the familiar fallacy of an ambiguous middle term, argue that it is cruel to put our fellow-creatures to pain, or, as some would add, to reduce them to slavery, or to use them in any way for our own rather than their good. Such persons, however, compel their fellow-creatures to drag them through the streets; they eat their fellow-creatures when sufficiently vivisected to be palatable; and they find philosophical excuses for those who kill their fellow-creatures for fun. But they are profoundly shocked when their fellow-creatures are hurt or killed for the general benefit of mankind.'

The real difficulty lies in the fact that, beyond all question, cruel and unnecessary experiments have been undertaken by people who ought to have known much better. That is admitted. Whether we can hope to keep these experiments in check by any amount of special and coercive legislation is

another matter. That may be doubted. The Act of 1876 (39 & 40 Vict. c. 77), enacts, that no person shall perform upon any living vertebrate animal any experiment calculated to give pain, except under stated conditions, with regard to anæsthetics and otherwise, under a penalty of £50 for the first offence. According to a House of Commons return issued July 1, 1881, the number of experiments performed upon living animals during the preceding year by medical men and others, licenced under the Act, was 311. Out of this number, only 114, it is stated, can have been the cause of any suffering whatever; and of these all but 17 were of a kind involving no more pain than is experienced in ordinary vaccination. The painful part of the proceeding in the 17 cases was carried out under anæsthesia, and no appreciable distress appears to have been inflicted in any single instance.

WEIGHTS AND MEASURES. ‘Si volons et établissons q’un pois, un mesure, et un verge, soit per tut la terre,’ said the 27th of King Edward the Third. ‘The same weights and measures shall be used throughout the United Kingdom,’ says the Act of Victoria. On the 1st of January, 1879, all subsisting enactments upon this important subject were erased for ever, and in their place stood the ‘Weights and Measures Act, 1878,’ which, as the date implies, had been passed during the previous year.

No philosophic explanation of the standards chosen, whether with reference to the action of a constant force or otherwise, is to be found in the 41-2 Vict. c. 49. The imperial yard is declared to be the distance between two gold plugs or pins upon a bronze bar deposited in the Standards Department of the Board of Trade. And this distance is the only unit of extension from which all other measures of the kind, whether lineal, superficial, or solid, are to be ascertained. Similarly, the weight, *in vacuo*, of a platinum cylinder, deposited in the same custody, is the imperial avoirdupois pound. And such pound is the only unit of weight from which all othe

weights, and measures having reference to weight, are to be ascertained.

Ten such pounds of distilled water, weighed under certain conditions, form the contents of an imperial gallon. And such gallon is the unit of capacity from which all other measures of capacity, as well for liquids as for dry goods, are to be ascertained.

Four 'parliamentary copies' of the above standards of weight and measure have been made. One has been deposited at the Mint; one with the Royal Society; one in the Greenwich Observatory; while the fourth has been 'immured in the New Palace at Westminster' (a). Secondary standards of weight and measure derived from the above, and in use under the direction of the Board of Trade, are called 'Board of Trade Standards.'

By an Order of Council (4th of February, 1879) reciting that a new denomination of standard weight of 100 lb., being a multiple of the imperial weight of one pound, was required, and that the Board of Trade had caused the same to be made, and given it the name of 'cental, or new hundred-weight'; it was ordered that the same should be a Board of Trade Standard, as if it had been mentioned in the *Weights and Measures Act, 1878*.

A table is provided by the Act, setting out the equivalent of imperial weights and measures in terms of the metric system, see page 458.

For the administration of the Act, the expression 'Local Authority' means, in counties, the Justices in General or Quarter Sessions; in boroughs, the Council; and in the City of London, the Court of the Lord Mayor, &c. (sched. 4; and see, as to boroughs, sec. 50). The Local Authorities are to provide local standards of weight and measure, and fulfil

(a) The pound and yard of 1853 are buried under a neat brass plate with suitable inscription on the staircase leading to the Committee rooms. No member seems to know where the standards of 1878 are laid at rest.

prescribed duties with reference to their custody, verification, and production (secs. 40—42). They are to appoint a sufficient number of inspectors for the purposes of the Act; allotting to each a separate district (sec. 43), and are to arrange for his attendance at proper times to verify and mark with the stamp of verification such weights, &c., as may be brought to him for that purpose; and in the case of a measure, or a weight of $\frac{1}{4}$ lb. or upwards, he is further to stamp thereon the mark of his district (sec. 44). Such weight, &c., will be legal throughout the United Kingdom, and need not be re-stamped if used in any other district (sec. 45). The fees for verification and stamping range from $\frac{1}{2}d.$, the charge for stamping a pewter quart, to $9d.$ upon a brass half-hundredweight (sec. 47, and sched. 5).

All expenses incurred under this Act are payable out of the local rate (sec. 51). Two or more Local Authorities may combine upon mutual terms (sec. 52). And any such authority may make bye-laws, subject to the approval of the Board of Trade (sec. 53).

Rules and Penal Clauses.—A bushel (*i.e.*, 8 gallon) measure must be cylindrical, and twice as wide as deep; half-bushels and multiples of a bushel, of corresponding figure (sec. 16), such measures to be filled level and not heaped (sec. 17). All coals, &c., of every description to be sold by weight and not by measure (5 & 6 Will. IV. c. 63, s. 9, re-enacted, sched. 6, part 2).

Every contract made in the United Kingdom for any work, wares, or merchandise, or other thing to be done, sold, delivered, &c., by weight or measure, is to be made according to one of the imperial measures above mentioned, or some multiple or part thereof; and if not so made shall be void. No local or customary measures, nor the use of the heaped measure, shall be lawful (sec. 19).

All articles sold by weight must be sold by *avoirdupois* weight; except that gold and silver (including thread, fringe, &c.), platinum, diamonds, &c., may be sold by the ounce troy,

or any decimal of such ounce. Drugs, when sold by retail, may be sold by apothecaries' weight (sec. 20).

Weights and measures of the metric system may be used in any dealing, and decimal sub-divisions of imperial weights and measures (sec. 21).

Any person may sell an article in any vessel not represented as containing any amount of imperial measure, and not used or intended as a measure (sec. 22).

' 23. Any person who prints, and any clerk of a market or other person who makes any return, price list, price current, or any journal or other paper containing price list or price current in which the denomination of weights and measures quoted or referred to denotes or implies a greater or less weight or measure than is denoted or implied by the same denomination of the imperial weights and measures under this Act, shall be liable to a fine not exceeding 10s. for every copy of every such return, price list, price current, journal, or other paper which he publishes.'

Every weight (unless too small to stamp) must have its denomination legibly 'stamped on the top or side thereof,' and every measure of capacity must have its denomination so stamped outside, in default of which neither weight nor measure is to receive the stamp of verification (sec. 28).

Every measure and weight used for trade must be verified and stamped by an inspector with the stamp of verification (sec. 29).

No leaden weight may be verified, or used for trade, unless wholly cased with brass, &c., and marked 'cased.' Plug of lead *bonâ fide* necessary for adjustment, may be inserted into any weight, and the stamp of verification affixed thereon (sec. 30).

Every coin-weight must be verified and stamped by the Board of Trade, otherwise not to be deemed a just weight (sec. 31).

All offences may be dealt with before two Justices (sec. 56). Penalties recoverable by distress. One moiety, or less, of any fine may be paid to informer, if court so order. All

weights, measures, &c., forfeited, to be broken up and materials sold or disposed of as court may direct. Proceeds of sales to go as fines (sec. 57). Possession of weights, &c., by trader, or on trade premises, *prima facie* evidence that they were used for trade (sec. 59). Appeal against any conviction to General or Quarter Sessions, see page 73.

OFFENCES AND PENALTIES.

[See, if necessary, note on *Summary Jurisdiction*. Higher penalty for second offence, indicated by *.]

1. (Sec. 19). Selling by any denomination of weight or measure other than imperial, each sale [40s].
2. Selling coals by measure (see page 455), each sale [40s].
3. (Sec. 20). Selling except by avoirdupois weight, or other contravention of this section—see above [£5].
4. (Sec. 24). Using or having in possession for use in trade any weight or measure not of the denomination of some Board of Trade Standard—or (sec. 29), not stamped as required by this section [£5, and forfeit weights, &c.*].
5. (Sec. 30). Using leaden weight not cased, &c. [£5*].
6. (Sec. 31). Using coin-weight not just; see above [£50].
7. (Sec. 32). Forging stamp or tampering with stamped weight [£50].
8. (*Ib.*). Using or selling measure or weight with forged stamp, &c. [£10, and forfeiture].
9. (Sec. 25). Using or having in possession for use in trade any weight, measure, scale, balance, steelyard, or weighing machine which is false or unjust—or wilfully committing, or being party to, any fraud in the use of any weight, &c. [£5, and forfeiture*]. It is no answer to the charge of using a balance unjust to the public to prove that due allowance for its inaccuracy was always made. ‘Scales should not be kept in such

an incorrect state as that they might be improperly used.' *G. W. R. v. Baillie*, 34 L. J. N. S. 31. Of course, a tradesman who uses a weight which is *against himself* (always supposing that he does not employ it for buying as well as selling purposes) cannot be convicted of using 'false or unjust' weight, *Booth v. Shadgett*, 37 J. P. 743. And in order to convict under the next offence, of making or selling a false weight, it must appear that the maker or seller was privy to intended fraud in its use. An ironmonger is not bound to examine and warrant every weight which he sells, upon pain of criminal prosecution.

10. (Sec. 27). Wilfully or knowingly making or selling false or unjust weights, &c. [£10*].
11. (Sec. 48). Every Justice, and every inspector authorised in writing by a Justice, may at all reasonable times inspect all weights, measures, &c., within his jurisdiction which are used, or in the possession of any person, or on any premises for use in trade, and may seize and detain any such which are liable to be forfeited; and may, for the purpose of such inspection, enter any place where he has reasonable cause to believe that there is any weight, measure, &c., which he is authorised to inspect. Penalty for obstructing the entry of such Justice or inspector, or refusing to produce all weights, &c., or preventing their examination, £5.*

LEADING METRIC EQUIVALENTS FROM SCHEDULE 3.

Length.	METRE	=	3 feet 3·3708 inches.
Surface.	HECTARE	=	2 acres 2280 sq. yards.
Capacity.	LITRE	=	1·7607 pints.
Weight.	KILOGRAM	=	2 lb., 3 oz., 4 gr.

WITNESSES. Various points in connection with witnesses will be found referred to in the Index.

Expenses.—There is no power to direct payment of a witness's expenses in non-indictable cases. Both prosecutor and defendant must make their own arrangements in that respect; but it is within the discretion of the court (p. 143) to make an allowance for this purpose in the costs of the successful party should costs be awarded. A witness, as we have seen, (p. 12), is not bound to attend to a subpoena to appear, unless a reasonable sum be tendered for his expenses. There is no fixed scale for this purpose; but by analogy with the scale applicable to indictable offences (in which case no tender is requisite) it would seem that one shilling, and, if over two miles from the court, 3*d.* per mile, or second-class fare by rail, is sufficient. In any event, a witness, once in court (see p. 179), cannot withhold his evidence in any criminal proceeding, upon the plea of not having been paid his expenses.

Dissuading or Threatening Witness.—Any attempt to prevent a witness from giving evidence, whether by bribe, intimidation, or otherwise, is a misdemeanour at common law and punishable upon indictment. Justices have unfortunately no power to deal summarily with conduct of this description as a distinct offence. But where witnesses have actually been threatened or molested for evidence already given, or in respect of evidence which it may become their duty to give, the person complained of should be bound over without ceremony. In serious cases it may be necessary to make example of the offender, and commit to sessions.

Witness Dangerously ill, &c.—Whenever it shall be made to appear to the satisfaction of any Justice that any person dangerously ill and not likely to recover, and who cannot be examined in the regular way, is able and willing to give material information relating to any indictable offence or relating to any person accused of such offence, provision is made for the taking by such Justice of his or

her evidence, which may be afterwards used upon the trial of any offender or offence to which it may relate, if the sick person be then dead, or there be no reasonable probability that he or she will ever be able to travel or give evidence. But it must be shown that reasonable notice was given to the party against whom it is sought to be used of the intention to take the same, and that such party 'had or might have had, if he had chosen to be present' (for which purpose provision is made in the case of a prisoner), 'full opportunity of cross-examining the deceased (qy. diseased!) person' (30-1 Vict. c. 35, ss. 6, 7).

WORKMEN. Under the head EMPLOYERS AND WORKMEN we have already mentioned the manner in which disputes between these parties may be adjusted upon Summary Jurisdiction. We will here give a brief *résumé* of some clauses of the 'Conspiracy and Protection of Property Act, 1875' (38-9 Vict. c. 86), which deal with injuries to the public interest and otherwise, inflicted by unscrupulous breach of the service-contract, as well as with the offence of intimidation among workmen themselves.

1. Any person employed by any public body or contractor charged with the duty of supplying any place with gas or water, who wilfully and maliciously breaks a contract of service to the peril of such supply. Penalty £20; or, in the discretion of the court, 3 months' hard labour (secs. 4, 14).

2. A notice to the above effect must be kept conspicuously posted up at the gas or water-works. Penalty—£5 per day during default (*ib.*).

3. Any person who wilfully and maliciously breaks a contract of service, knowing, or having reason to know, that the probable consequence will be to endanger human life, or cause serious bodily injury, or to expose valuable property to damage or destruction. Penalty, same as 1 (sec. 5).

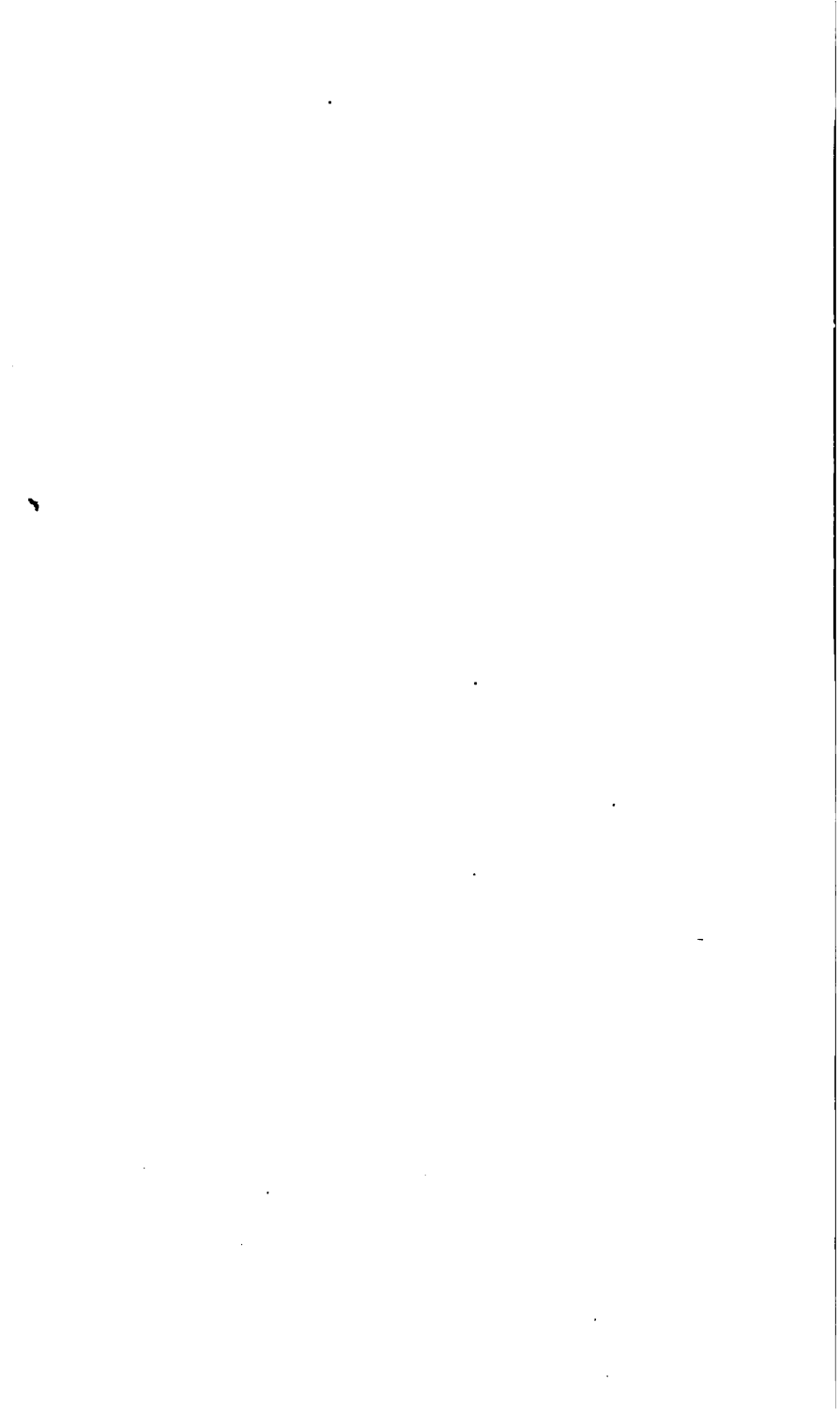
4. Any person who, with a view to compel another to

abstain from doing anything which he has a right to do, or to do anything which he has a right to abstain from doing, (i) uses violence to, or intimidates such person, his wife or children, or injures his property ; or (ii) persistently follows him about from place to place ; or (iii) hides his tools, clothes, &c. ; or (iv) watches or besets his house or place of employment ; or (v) follows him with two or more persons in a disorderly manner through any street, &c. Penalty, same as 1 (sec. 7).

5. ' An agreement or combination by two or more persons to do, or procure to be done, any act, in contemplation or furtherance of a trade dispute between employers and workmen, shall not be indictable as a conspiracy, if such act committed by one person would not be punishable as a crime ' (sec. 3). See CONSPIRACY.

Upon the hearing of any charge arising under 1 and 3, the respective parties to the contract, their husbands and wives, are competent witnesses (sec. 11). And any person charged before a Court of Summary Jurisdiction in respect of 1, 3, or 4 may elect to be indicted (sec. 9). Appeal to General or Quarter Sessions ; see page 73.

Payment of wages in public-houses.—Under the 46-7 Vict. c. 31, ' no wages shall be paid to any workman at or within any public-house, or place for the sale of any spirits, wine, cider, or other spirituous or fermented liquor, or any office, garden or place belonging thereto or occupied therewith, ' except wages paid by the resident occupier of such public-house, &c., to any workman employed by him. Penalty, £10 for each offence. ' Employer ' *prima facie* liable. All offences may be prosecuted and all penalties recovered, by any person, under the Summary Jurisdiction Acts. The expression ' workman ' includes any person engaged in manual labour other than a domestic or menial servant.



APPENDIX.

The following are samples of some of the more ordinary forms of process referred to in the text. The matter, in every case, is supposed to be cognisable within the Brentford Division.

I.

INFORMATION (p. 9).

Middlesex } THE INFORMATION AND COMPLAINT of Susan Swan,
to wit. } of Redbridge, in the county of Sussex, spinster, taken
this 1st day of January, 1883, before the undersigned, one of Her
Majesty's Justices of the peace for the county of Middlesex, who
SAITH that Peter Battleaxe, of Blunderwood, in the county of
Kent, did on the 30th day of December, 1882, in the High Street,
Brentford, in the said county of Middlesex, unlawfully assault
and beat the said Susan Swan, against the form of the statute in
such case made and provided.

Taken before me, }
the day and year } F. H. N. Glossop.
first above written. }

Seal.

II.

SUMMONS (p. 11).

To Peter Battleaxe, of Blunderwood, in the county of Kent,
farrier.

WHEREAS Information hath this day been laid before the
undersigned, one of Her Majesty's Justices of the peace in and
for the county of Middlesex, for that you did on the 30th day of
December, 1882, in the High Street, Brentford, in the said county
of Middlesex, unlawfully assault and beat Susan Swan, of Red-
bridge, in the county of Sussex: THESE ARE THEREFORE TO
COMMAND YOU in Her Majesty's name to be and appear on Satur-
day, the 6th day of January instant, at eleven o'clock in the
forenoon, at the Town Hall, Brentford, in the said county of
Middlesex, before such Justices of the peace for the said county
as may then be there, to answer the said Information, and to be
further dealt with according to law.

Given under my hand }
and seal, this 1st day of } F. H. N. Glossop.
January, 1883, at Brent- }
ford aforesaid. }

Seal.

III.

WARRANT in the first instance, instead of summons (p. 11).

To each and all of the constables of the Metropolitan Police Force.

WHEREAS Information hath this day been laid before the undersigned, one of Her Majesty's Justices of the peace in and for the county of Middlesex, for that Peter Battleaxe, of Blunderwood, in the county of Kent, farrier, did, on the 30th day of December, 1882, in the High Street, Brentford, in the said county of Middlesex, unlawfully assault and beat Susan Swan; and oath being now made before me substantiating the truth of such Information: THESE ARE TO COMMAND YOU in Her Majesty's name, forthwith to apprehend the said Peter Battleaxe, and to bring him before some one or more of Her Majesty's Justices in and for the said county of Middlesex to answer the said Information, and to be further dealt with according to law.

Given under my hand, &c.

[N.B. *The warrant is indorsed with the name of the particular constable to whom its execution is entrusted.*]

IV.

WARRANT where a summons has issued and been disobeyed (p. 12).

To each and all of the constables of the Metropolitan Police Force.

WHEREAS on the 1st day of January last past, Information was laid before the undersigned, one of Her Majesty's Justices of the peace in and for the county of Middlesex, for that Peter Battleaxe, of Blunderwood, in the county of Kent, farrier, did on the 30th day of December, 1882, in the High Street, Brentford, unlawfully assault and beat Susan Swan: AND WHEREAS I then issued my summons unto the said Peter Battleaxe, commanding him in Her Majesty's name to appear on Saturday, the 6th day of January, 1883, at eleven o'clock in the forenoon, at the Town Hall, Brentford, in the said county of Middlesex, before such Justices of the peace as might then be there, to answer the said Information, and to be further dealt with according to law: AND WHEREAS the said Peter Battleaxe neglected to appear at the time and place so appointed as aforesaid, although it hath now been proved to me upon oath that the said summons hath been duly served upon the said Peter Battleaxe: AND WHEREAS oath has been made before me substantiating the truth of the Information aforesaid: THESE ARE THEREFORE TO COMMAND YOU [*as in preceding form*].

Given under my hand, &c.

V.

BACKING on Warrants III and IV. authorising their execution in the county of Kent (p. 11).

Kent } Whereas proof on oath hath this day been made before
to wit. } me, one of Her Majesty's Justices of the peace in and
for the said county of Kent, that the name of F. H. N. Glossop to
the within warrant subscribed is of the handwriting of the Justice
of the peace within mentioned : I do therefore hereby authorise
Alfred Lee, who brings me this warrant, and all other persons to
whom the same was originally directed, or by whom it may law-
fully be executed, and also all constables and other peace officers
of the said county of Kent, to execute the same within the said
last mentioned county.

Given under my hand, &c.

VI.

SUMMONS to a witness (p. 12).

To John Paraffin, of Old Isleworth, in the county of Middlesex,
grocer.

WHEREAS Information was laid before the undersigned, one of
Her Majesty's Justices of the peace in and for the said county of
Middlesex, for that Peter Battleaxe did on the 30th day of De-
cember, 1882, in the High Street, Brentford, in the said county,
unlawfully assault and beat Susan Swan; and it hath been made
to appear to me upon oath that you are likely to give material
evidence on behalf of the said Susan Swan in this behalf : THESE
ARE THEREFORE TO REQUIRE YOU to be and appear on Saturday,
the 6th day of January instant, at eleven o'clock in the forenoon,
at the Town Hall, Brentford, in the said county of Middlesex,
before such Justices of the peace for the said county as may then
be there, to testify what you shall know concerning the matter of
the said Information.

Given under my hand, &c.

VII.

WARRANT to remand a defendant apprehended under III.
or IV. (p. 360).

To each and all of the constables of the Metropolitan Police
Force, and to the Keeper of Her Majesty's Prison of Clerk-
enwell.

WHEREAS Information was laid before the undersigned [as in
IV.], AND WHEREAS the said Peter Battleaxe hath been appre-
hended under a warrant upon such Information : THESE ARE
THEREFORE TO COMMAND you the said constables in Her Majesty's

name forthwith to convey the said Peter Battleaxe to Her Majesty's Prison of Clerkenwell, and there to deliver him to the said keeper thereof; AND I DO HEREBY COMMAND you the said keeper to receive the said Peter Battleaxe into your custody in the said prison, and there safely keep him until Saturday next, the 13th day of January instant, when you are hereby commanded to convey and have him at eleven o'clock in the forenoon at the Town Hall, Brentford, in the county of Middlesex, before such Justices of the peace for the said county as may then be there, to answer the said Information, and to be further dealt with according to law.

Given under my hand, &c.

VIII.

CONVICTION where the punishment is by fine, with imprisonment in default (p. 15).

IN THE COUNTY OF MIDDLESEX. Petty Sessional Division of BRENTFORD.

Before the Court of Summary Jurisdiction sitting at Brentford, the 6th day of January, 1883.

Peter Battleaxe is this day convicted before this Court, for that he on the 30th day of December, 1882, in the High Street, Brentford, did unlawfully assault and beat Susan Swan: AND IT IS ADJUDGED that the said Peter Battleaxe do for his said offence forfeit and pay to the clerk of this court the sum of £3, and do also pay to the said Susan Swan the sum of thirty shillings for costs: AND IT IS ORDERED that the said sums be paid forthwith; and, if default is made in payment according to this adjudication and order, it is adjudged that the said Peter Battleaxe be imprisoned in Her Majesty's prison at Coldbath Fields, there to be kept to hard labour for the space of one calendar month, unless the said sums and all costs and charges of his commitment and conveyance to the said prison be sooner paid.

Given under our hands, &c.

IX.

CONVICTION where the punishment is by imprisonment (p. 15).

[As in preceding form down to adjudging part].

AND IT IS ADJUDGED that the said Peter Battleaxe be for his said offence imprisoned in Her Majesty's prison at Coldbath Fields, there to be kept to hard labour for the space of one calendar month: AND IT IS ORDERED that he pay to the said Susan Swan the sum of thirty shillings for costs forthwith: And, if default is made in payment according to this adjudication and

order, IT IS ORDERED that the sum due thereunder be levied by distress and sale of the goods of the said Peter Battleaxe. And in default of sufficient distress IT IS ADJUDGED that he be imprisoned in Her Majesty's prison at Coldbath Fields, there to be kept to hard labour for the space of fourteen days, to commence at and from the termination of his imprisonment as aforesaid, unless the said sum and all costs and charges of the said distress and of his commitment and conveyance to prison be sooner paid.

Given under our hands, &c.

X.

ORDER DISMISSING INFORMATION (p. 15).

Middlesex } BE IT REMEMBERED that on the 1st day of January,
to wit. { 1883, Information was laid before the undersigned,
F. H. N. Glossop, Esq., one of Her Majesty's Justices of the
peace in and for the said county of Middlesex, for that [*as in
Summons, Form II.*]: and now at this day, to wit on the 6th day of
January, 1883, both the parties appear before us the undersigned,
two of Her Majesty's Justices aforesaid, in order that we should
hear and determine the said Information: Whereupon the matter
being by us duly considered it manifestly appears to us that the
said Information is not proved: WE DO THEREFORE DISMISS THE
SAME, AND DO ADJUDGE that the said Susan Swan do pay to the
said Peter Battleaxe the sum of forty shillings for his costs incur-
red by him in his defence in this behalf; and, if the said sum for
costs be not paid forthwith, WE ORDER that the same be levied by
distress and sale of the goods and chattels of the said Susan
Swan; and, in default of sufficient distress in that behalf, WE
ADJUDGE the said Susan Swan to be imprisoned in the House of
Correction at Coldbath Fields in the said county, and there kept
to hard labour for the space of fourteen days, unless the said sum
for costs and all costs and charges of the said distress shall be
sooner paid.

Given under our hands, &c.

XI.

CERTIFICATE OF DISMISSAL OF CHARGE (p. 15).

WE HEREBY CERTIFY that an Information preferred by Susan Swan against Peter Battleaxe, of Blunderwood, in the county of Kent, for that he the said Peter Battleaxe did on the 30th day of December, 1882, in the High Street, Brentford, in the county of Middlesex, unlawfully assault and beat the said Susan Swan, was this day considered by us, two of Her Majesty's Justices of the peace in and for the said county of Middlesex, and was by us dismissed with costs.

Given under our hands, &c.

XII.

WARRANT OF COMMITMENT on conviction, where the punishment is by imprisonment, as in Form IX. N.B. The costs, &c., are assumed to have been paid (p. 17).

IN THE COUNTY OF MIDDLESEX. Petty Sessional Division of BRENTFORD.

To each and all of the constables of the Metropolitan Police Force, and to the Keeper of Her Majesty's prison at Coldbath Fields.

Peter Battleaxe has been this day convicted before the Court of Summary Jurisdiction sitting at Brentford, for that he on the 30th day of December, 1882, did in the High Street, Brentford, aforesaid, unlawfully assault and beat Susan Swan. And it has been adjudged by the court that the defendant be for his said offence imprisoned in Her Majesty's prison at Coldbath Fields, and there kept to hard labour for the space of one calendar month. THEREFORE YOU ARE HEREBY COMMANDED, you the said constables, to take the defendant and convey him to the said prison, and there deliver him to the keeper thereof, and you the said keeper to receive the defendant into your custody in the said prison, and there to imprison him and keep him to hard labour for the space of one calendar month.

Given under our hands, &c.

XIII.

SUMMONS upon COMPLAINT in BASTARDY (p. 96).

To Peter Battleaxe, of Blunderwood, in the county of Kent, farrier.

Middlesex } WHEREAS application hath been this day made to
to wit. } me, the undersigned, one of Her Majesty's Justices of
the peace for the said county of Middlesex, by Susan Swan, a
single woman, residing at Twickenham, in the Petty Sessional
Division of the said county for which I act, who hath been
delivered of a bastard child within twelve calendar months before
this day, and of which bastard child she alleges you to be the
father, for a summons to be served upon you to appear at a Petty
session of the peace according to the form of the statute in such
case made and provided: THESE ARE THEREFORE to require you
to appear at the Petty session of the Justices holden at the Town
Hall, Brentford, being the Petty session for the Division in which
I usually act, on Saturday, the 13th day of January, 1883, at 11
o'clock in the forenoon, to answer any COMPLAINT which she
shall then and there make against you touching the premises.

HEREIN fail you not.

Given under my hand, &c.

XIV.

COMPLAINT as to a NUISANCE (p. 44).

Middlesex } BE IT REMEMBERED that this 1st day of January,
to wit. } 1883, at the Town Hall, Brentford, in the said county,
Henry Briggs, being the Clerk of and acting on behalf of the
Heston and Isleworth Local Board of Health in the said county,
personally cometh before me, one of Her Majesty's Justices of the
peace in and for the said county, and COMPLAINETH for that on
the 12th day of December, 1882, information was given to the
said Local Board by Richard Harrison, of Isleworth, a person
aggrieved by the nuisance hereinafter mentioned, that within
the space of six calendar months last past, to wit on the day last
aforesaid, upon premises in the occupation of Adam Grindle, in
the Richmond Road, within the District of the said Local Board,
there was a nuisance arising from certain swine so kept as to be
a nuisance or injurious to health : And the said Henry Briggs
informeth me that the said information so given is correct, and
that the said nuisance was caused by the act of the said Adam
Grindle, and he further informeth me that on the 15th day of
December, 1882, a notice was served upon the said Adam Grindle,
as such occupier as aforesaid, requiring him to abate the said
nuisance within fourteen days, and that the said Adam Grindle
has made default in complying with the requisition aforesaid,
and has not abated the said nuisance : WHEREFORE the said
Henry Briggs prays consideration of the premises, and that the
said Adam Grindle may be summoned before such two or more
Justices as may be in attendance in Petty sessions to hear the
said COMPLAINT, and to answer the premises, and to make his
defence thereto.

Taken before me, &c.

XV.

ORDER upon COMPLAINT as to a DANGEROUS DOG (p. 154).

Middlesex } BE IT REMEMBERED that on the 1st day of Janu-
to wit. } ary, 1883, COMPLAINT was made before us, the under-
signed, two of Her Majesty's Justices of the peace in and for the
said county of Middlesex, for that on the 25th day of December,
1882, at Verona Road, in the parish of Twickenham, a certain
dog belonging to Nicholas Launce, of Crab Cottage, in the said
road, was dangerous and not kept under proper control. AND
now this 6th day of January, 1883, at the Town Hall, Brentford,
the said Nicholas Launce, having been duly summoned to answer
the said complaint, appears before us ; and we, having heard the
matter of the said complaint, do adjudge that the said dog is
dangerous ; AND WE DO ORDER AND DIRECT that Nicholas Launce
keep the said dog under proper control.

Given under our hands, &c.

XVI.

ORDER UPON COMPLAINT to enter into **RECOGNISANCES TO KEEP THE PEACE, &c.** (p. 434).

IN THE COUNTY OF MIDDLESEX. Petty Sessional Division of **BRENTFORD.**

Before the Court of Summary Jurisdiction sitting at the Town Hall, Brentford, the 1st day of January, 1883.

Susan Swan having made a **COMPLAINT** that Peter Battleaxe, on the 25th day of December, 1882, in the High Street, Brentford, aforesaid, threatened to do her grievous bodily harm, which threat the complainant fears and verily believes he will carry into effect unless restrained by the order of this court, and the said Peter Battleaxe having appeared, and on hearing the matter of the complaint, **IT IS ADJUDGED AND ORDERED** by this court that the said Peter Battleaxe do forthwith, to the satisfaction of the said court, enter into a **RECOGNISANCE** in the sum of £50, with two sureties in the sum of £25 each to keep the peace and be of good behaviour towards Her Majesty and all her liege people, and especially towards the complainant, for the term of twelve calendar months now next ensuing. And, if the said Peter Battleaxe fail to comply with this order, it is adjudged that he be imprisoned in Her Majesty's prison at Coldbath Fields for the space of six calendar months, unless he sooner complies with this order. And it is also adjudged and ordered that the said Peter Battleaxe pay to the complainant the sum of twenty shillings for costs forthwith.

Given under our hands, &c.

XVII.

SEARCH WARRANT for stolen goods (p. 413).

To Alfred Lee, one of the constables of the Metropolitan Police Force.

Middlesex } Whereas Alexander Oliver, of the Broadway, in the
to wit { parish of Ealing, in the county aforesaid, hath this
day made information upon oath before the undersigned, one of
Her Majesty's Justices of the peace for the said county, that the
following goods, to wit, a silver teapot, a silver coffee-pot, twenty-
four silver forks, and twenty-four silver spoons, all marked with
the crest of a grasshopper, have lately been feloniously stolen,
taken, and carried away out of his dwelling house as aforesaid,
and that he hath good cause to suspect and doth suspect that the
said goods or some part thereof are concealed in the house of a
person commonly called the French Spider, and known in these
parts by no other name, in Black Lane, Greenford, in the same
county. **THESE ARE THEREFORE** to authorise and command you,
with proper assistance, to enter the house of the said French

Spider in the daytime, and there diligently search for the said goods ; and if the same or any part thereof shall be found upon such search, that you bring the goods so found and also the body of the said French Spider before me or some other of Her Majesty's Justices of the peace in and for the said county, to be disposed of and dealt with according to law.

Given under my hand, &c.

XVIII.

JUSTICES' LICENCE to keep an INN or ALEHOUSE (p. 260).

Middlesex } At the General Annual Licencing Meeting, holden
to wit } at the Town Hall, Brentford, in the county of
Middlesex, on the 7th day of March, 1882, in and for the Division
of Brentford, in the said county :—

WE, being four of the Justices acting for the said Division, and being a majority of those at the said meeting assembled, Hereby grant unto Daniel Dawson, of Hanwell, Middlesex, in the said Division, THIS LICENCE, authorising him to apply for and hold any of the Excise licences that may be held by a Publican for the sale by retail at a house situated at Hanwell, aforesaid, and known by the sign of 'The Orange Tree,' of intoxicating liquor to be consumed either on or off the premises.

THE OWNER of the premises in respect of which this licence is granted is Wilfred Lawson, of Parliament Place, in the county of Middlesex.

THIS LICENCE shall be in force from the 5th day of April next until the 5th day of April, 1883, and no longer.

Witness our hands, &c.

XIX.

FEES AT PETTY SESSIONS (p. 125).

The following are among the fees authorised to be taken by Clerks to Petty Sessional Divisions in Middlesex.

Information or Complaint, 1s. and upwards.—summons, 1s.—witness subpoena, 2s.—each oath, 1s.—each document in evidence, 1s.—hearing, if no conviction, 1s. 6d.—conviction, 2s. 6d. to 5s.—each case under Education Act, 4s.—proceedings in case of child or young person, under Summary Jurisdiction Act (inclusive), 8s.—ditto, in case of adult, 14s.—order in bastardy, 4s.—recognition, 2s. 6d.—proceedings upon commitment for trial (inclusive), £1.

XX.

A PRISON ANECDOTE (p. 373).

The annexed is inserted simply because, in the first place, the story as told in the papers conveyed a very unjust imputation upon the conduct of persons who are certainly not hard-hearted as a rule : secondly, because its true version inculcates a useful

caution as to the acceptance of particularly well authenticated anecdotes of a sensational kind.

One of our prisoners at Coldbath Fields, John Edwards by name, was recently tried at the Old Bailey for assaulting a warder with a knife. The following account of the affair is copied from the *Times* of November 26, 1881. 'The prisoner had been confined in a cell, and he appears to have formed a friendship with a mouse, which got in through the ventilator. Subsequently he became much attached to it, taking it up his sleeve into the exercise yard, making his fellow-prisoners laugh. The prison authorities, however, thought it their duty, acting no doubt in accordance with the prison regulations, to take the mouse away from him and to kill it. It required two warders to get it away. The prisoner went out into the corridor to see what had become of his friend, and when he found that the authorities had taken it away he naturally did not like it, and seeing an open knife he snatched it up and ran after an officer, but instead of striking him he struck the back part of the cell door.' Mr. Justice Hawkins evinced considerable pity for the man, while the jury eagerly expressed their own sympathy by a prompt verdict of 'not guilty,' which was received with a round of applause in court.

Naturally this story was made the most of by the papers. Sentimental people remembered the mice which played by moonlight upon the pavement of Chillon. A good deal of sorrow was expended both over the diminutive victim and the bereaved prisoner, whose better feelings had been touched and kindled by the trustfulness and affection of his little guest. It was clear that there must have been a good deal of hard-heartedness somewhere. Now when people have got an Old Bailey law-report to fall back upon, they are apt to consider themselves pretty safe as to their facts. My own contribution to the story shall be made without comment. The following I took down myself from the lips of trustworthy prison officers, when giving evidence before the Visiting Committee upon oath. (1.) The mouse in the exercise yard was tightly tied by a string to its tail. The prisoner had no doubt caught it, but that he had ever tamed it rests entirely upon his own assertion. (2.) The mouse was never taken from him at all. He was ordered to 'fall out' from exercise, and hand it over. He refused, and was sent to his cell in charge of two officers. On his way, he deliberately threw the mouse into the stone basement nine feet below. (3.) The assault on the warder was committed *eleven days* after all this occurred. The warder attacked had nothing to do with the above, and had never even heard of the mouse.

XXI.

EXPLOSIVE SUBSTANCES ACT, 1883 (p. 190).

This Act, after being hurried with almost unexampled rapidity through both Houses, received the Royal assent, as 46-7 Vict. c. 3, on the 10th of April. The following are among its principal provisions:—

(Sec. 2.) 'Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life, or to cause serious injury to property, shall, whether any injury to person or property has been actually caused or not, be guilty of felony.' [Pen. serv. 5 years—Life or impr. 2 y.]

(Sec. 3.) 'Any person who within, or (being a subject of Her Majesty) without H. M.'s dominions, unlawfully and maliciously (a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in the United Kingdom of a nature likely to endanger life or to cause serious injury to property; or (b) makes, or has in his possession, or under his control, any explosive substance with intent, &c., 'shall, whether any explosion does or does not take place, and whether any injury to person or property has been actually caused or not, be guilty of felony.' [Pen. serv. not ex. 20 years, or impr. 2 y.]

(Sec. 4.) 'Any person who makes, or knowingly has in his possession, or under his control, any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it, or does not have it in his possession, or under his control, for a lawful object, shall, unless he can show that he made it, or had it in his possession or under his control for a lawful object, be guilty of felony.' [Pen. serv. not ex. 14 years, or impr. 2 y.] Such person and his or her wife or husband may, if such person thinks fit, give evidence as an ordinary witness.

The expression 'explosive substance' in the above clauses includes any materials for making explosives, and any apparatus, machine, or implement used or intended to be used for causing explosion with any explosive substance (sec. 9).

(Sec. 5.) Accessories punishable as principals.

(Sec. 6.) 'Where the Attorney-General has reasonable ground to believe that any crime under this Act has been committed, he may order an inquiry' by any Justice for the county, &c., in which the crime was committed, or is suspected to have been committed, although no person may be charged before him with the commission of such crime.

(Sec. 7.) 'If any person is charged before a Justice with any crime under this Act, no further proceedings shall be taken against such person without the consent of the Attorney-General, except such as the Justice may think necessary, by remand or otherwise, to secure the safe custody of such person.'

XXII.

POST OFFICE (page 358).

By the 'Post Office Protection Act, 1884,' 47-8 Vict. c. 76, s. 3, it is forbidden to place in or against any post office letter-box any fire, match, light, or explosive or dangerous substance, or any filth; or to commit a nuisance in or against it; or to do or attempt to do anything likely to injure it or its contents. Penalty, on summary conviction, £10; on indictment, 12 months hard labour.

It is forbidden (sec. 4) to send or attempt to send a 'postal packet,' in other words (sec. 19), a 'post letter [*i.e.*, any letter, newspaper, packet or article permitted to be sent by post] enclosing any explosive or dangerous substance, any filth, any noxious or deleterious substance whatever, &c., &c., or anything which is likely to injure other postal packets or an officer of the P.O.; or enclosing any obscene print, photograph, book, &c.; or having on such packet any words, marks, &c., of an obscene or grossly offensive character. Penalty as in last case.

It is forbidden (sec. 5) without due authority to placard, paint, or disfigure any post office, letter-box, telegraph post, or other property belonging to or used by or on behalf of the Postmaster-General. Penalty, on summary conviction, 40s.

It is forbidden (sec. 7) to make, knowingly utter or sell, or knowingly use any fictitious postage stamp, &c. Penalty, on summary conviction, upon prosecution directed by Commissioners of Inland Revenue, £20.

It is forbidden (sec. 8) to place, without due authority, on any house, wall, window, &c., any words or marks which may reasonably lead the public to believe that the house is a post office, or that any box is a post office letter-box. Penalty, on summary conviction, 40s.

Any person (sec. 9) wilfully obstructing an officer of the post office in the execution of his duty, or the business of a post office, is liable to a like penalty.

Forging, &c., any telegram (sec. 11), whether with or without intent to defraud, is punishable by a fine of £10 on summary conviction, or 12 months hard labour upon indictment. And any person being in the employment of a telegraph company improperly divulging the purport of any telegram is liable to a fine of £20 on summary conviction, or to 12 months hard labour, or a fine of £200, upon indictment. A written message delivered for transmission by telegraph is a 'post letter.'

All offences (sec. 12) which are punishable under this Act on summary conviction may be prosecuted, and all fines so recoverable may be recovered, in England, under the Summary Jurisdiction Acts. And every offence under the P.O. Acts which is punishable by fine not exceeding £20 may be prosecuted and the fine and costs recovered under the S. J. Acts.

'Any offence' (sec. 12 (4)) 'punishable on indictment under this Act, whether it is or not also punishable on summary conviction, shall be deemed to be an indictable offence under the Post Office laws within the meaning of the first schedule to the S. J. Act, 1879,' [see page 39].

XXIII.

RIOT (page 411.)

An answer given by the Home Secretary, Sir William Harcourt, in the House of Commons (July 15, 1884), to certain questions which had been put to him with reference to what were then known as the Cleator Moor riots, was as follows:—

"In England the Executive Government is not the conservator of the peace. The conservation of the peace is entrusted to the magistrates in the different localities for which they have jurisdiction. They are the conservators of the peace; and the Executive Government and the Secretary of State have no authority whatever to give them orders in the matter. The Government and the Home Secretary have no authority over the local police, either in the counties or in the boroughs. That is a fundamental proposition which seems sometimes not to be understood. So firmly is this principle established that the Secretary of State is not even a magistrate or a conservator of the peace in his office. That was laid down by Lord Camden in the case of general warrants. I have no authority as a conservator of the peace in England, or even in the metropolis. That being the case, the magistrates, who have knowledge of the state of affairs in a district, have the responsibility of dealing with it, and the authority to do so. They may, under the Army regulations, apply directly to the Secretary of State for military aid, in the event of the police force at their disposal not being sufficient. They may also consult the Secretary of State, and ask for advice as to how they should act in difficult circumstances, and of course the Secretary of State is happy to place at their disposal any advice which he can give with the help of the law officers of the Crown; for in matters of this description there is nothing more difficult for the authorities on the spot to deal with than the question of meetings which are likely to lead to a breach of the peace. In the year 1867 there were Orange riots apprehended at Liverpool. The Home Office was consulted by the local authorities, and this reply was sent:—

"Issue proclamation similar to that by the borough. Collect county police. Ask assistance of borough police. Swear in special constables. Give notice to military authorities. Apply to Orange leaders to stop their meetings and processions. Apply to Roman Catholic clergy to dissuade the people. Do everything in your power to prevent a collision and breach of the peace. *To do this, you are justified in preventing meetings and stopping processions.* Let the people know that they are stopped on these grounds. Magistrates are not to be bound by this, but must

exercise their own discretion, depending on the locality where a meeting is held, the numbers attending, the force at disposal, and other elements that cannot be known to the Secretary of State.' Note.—This telegram was sent after a personal consultation with Sir John Karslake, who attended at the Home Office and settled it."

Sir William Harcourt proceeds to remark that the well-known Salvation Army case of *Beatty v. Gillbanks* (51 L. J. M. C. 117) had embarrassed the Home Office with regard to offering in future the very material portions of advice which are marked in italics. The case in question decided that a lawful assembly, *i.e.*, a march of Salvationists, is not rendered unlawful by reason of the knowledge of those taking part in it that opposition will be raised to it, which opposition will in all probability give rise to a breach of the peace upon the part of such opponents. The Justices at Weston-super-Mare, in consequence of serious and dangerous tumults which had there recently attended excursions of this kind, issued an order directing all persons to abstain from assembling to the disturbance of the public peace in the public streets of that parish. The appellant Beatty, a 'captain' in the Salvation Army, with two others, were apprehended while heading a procession in defiance of the above order. They were charged with having unlawfully and tumultuously assembled with other persons to the number of 100 or more in public thoroughfares, &c., to the disturbance of the public peace. In the result they were bound over to keep the peace, &c., for 12 months, with 3 months imprisonment in default. A special case was demanded and stated.

The case concludes as follows, and probably with truth:—"The assembling of the Salvation Army and march of the procession and collection of the mob was a terror to the peaceful inhabitants of the town, and was calculated to cause a breach of the peace, and any rational person knowing the circumstances would suppose that unless the procession and mob were dispersed there would be a repetition of the previous violent and tumultuous acts and a breach of the peace. The appellants intended to parade through the principal streets, and they had good reason to expect that they would come into collision with the Skeleton Army, and that there would be the same fighting and disturbance as on previous occasions. The appellants, however, contended at the hearing that there had not been any unlawful and tumultuous assembling upon their part, and that the arrest had been unlawful, &c. The questions were, whether the appellants were guilty as charged? and whether the order made against them was valid?

Per Field, J. (Bowen, J., concurring), Appeal allowed, with costs against the Justices.

This judgment (being in a criminal case) could not be carried to the Court of Appeal; but it appears to have been mentioned with approval. Let it be clearly understood that we are not now dis-

cussing the rights of the Salvation Army. What we desire is to point out that Mr. Justice Field assumed, as an element of his judgment, that from them at least no misconduct was to be expected. 'The appellants,' he says, 'belong to an association of persons whose object is to reclaim others, and to induce them to join in religious exercises. No one imputes any other object to them; and so far from any wish on their part to carry out their object by force, it is not disputed that their opinions are quite adverse to any such means being employed.'

We may perhaps conclude that *Beatty v. Gillbanks* will hardly be considered as binding when the question arises as to other assemblages upon whose good conduct and self-restraint it would be less possible to count.

One word more. Mr. Justice Field in summing up the opinion of himself and his brother judge observes, 'The finding of the magistrates comes to this, that a man may be indicted for doing a lawful act, if he knows that his doing it will cause another to do an unlawful act. There is no authority for such a proposition.'

St. Paul never said that a man might be indicted for anything; otherwise the last sentence would be startling enough. But look at it as a matter of conscience and common sense.

There is a lawful act which A. may do to-day. But he discovers and knows that his doing that selfsame act to-morrow will cause B. to kill C. If he *knows* this, *i.e.*, if it is as we say, a dead certainty, we may set B.'s volition in the matter aside altogether, so far as A. is concerned. A., however, does the act. B. retorts as foreseen. C. is killed. And the man who deliberately and advisedly set all the mischief going is free from blame. 'Which is curious,' as Euclid was fond of observing,

INDEX.

- ABANDONING CHILD, 119; and *see* VAGRANTS, 449 (1, 16)
- ABDUCTION OF WOMEN, 59; of girl under sixteen, *ib.*; *see also* CHILDREN, 119
- ABETTING, *see* PRINCIPAL AND ACCESSORY, 370; and 39
- ABORTION, causing, &c., 60
- ABROAD, offences committed, 25; and *see* HIGH SEAS, 228
- ABSCONDING DEBTOR, *see* BANKRUPTCY, 94
- ABSENCE of party to proceedings, 359, 360
- ABUSIVE LANGUAGE, 60; no excuse for retaliatory violence, 87, 325
- ACCESSORY to offence, *see* PRINCIPAL AND ACCESSORY, 370
- ACCIDENT, killing by, 324
- ACCOMPLICE, 370; evidence of, 178; none in manslaughter, 327
- ACCOUNTS, falsification of, 173
- ACCUSING OF CRIME, 60
- ACTION, for false imprisonment, 81; for assault, 87; for malicious damage, 311. Actions against Justices, 285
- ADHESIVE STAMPS, how to be cancelled, 69; penalty for using a second time, 425
- ADMIRALTY, jurisdiction of, *see* HIGH SEAS, 228
- ADULTERATION of food or drugs, 61; of bread, 110; of seeds, 414; of drink, by licenced person, 279
- ADULTERY, effect of, upon questions of maintenance, 353
- ADVERTISING, for betting purposes, 218; reward 'with no questions asked,' 130
- AFFIDAVITS, *see* OATHS, 329
- AFFILIATION, *see* BASTARDY, 95
- AFFRAY, fighting in public, 66
- AGENTS, misapplication of property by, 67; *see also* MASTER AND SERVANT, 315

- AGGRAVATED ASSAULT on female or child, 89
- AGREEMENTS, law respecting, 67; Statute of Frauds, 68; stamps, 69
- AGRICULTURAL LABOURERS, *see* EMPLOYERS AND WORKMEN, 174; damaging agricultural machines, 312 (9)
- AIDING AND ABETTING, *see* PRINCIPAL AND ACCESSORY, 370; and 39
- ALE-HOUSES, *see* INTOXICATING LIQUOR LAWS
- ALIENS, 70
- ALMS, asking in public, *see* VAGRANTS, 449 (5); fraudulently endeavouring to collect, *ib.* (14); indiscriminate almsgiving forbidden by King Edward III., 447
- ALTERATION in sentence, *see* PRACTICE (8), 363
- ANALYST, public, 61
- ANGLING, *see* FISHING, 200
- ANIMALS, cruelty to, 144; drugging, 160; baiting, 349; stealing tame animals, 293 (3); killing or wounding same, 312 (6); stealing horses, cattle, sheep, &c., 295 (16); killing or wounding same, 313 (18); dangerous animals, 153; *see also* BIRDS, CATTLE-STRAYING, CONTAGIOUS DISEASES, DOGS, and VIVISECTION. As regards 'wild animals,' *see* GAME, 205; LABOENT, 290
- APPEAL, generally, 70; conditions of appeal, 71; evidence on appeal, 72, stating case for Superior Court, 73; certiorari, 74; mandamus 76; hearing of appeals, 50. Appeal in excise cases, 185.
- APPEARANCE, *see* PRACTICE, 360; by counsel, 361
- APPREHENSION, *see* ARREST
- APPRENTICES, 78; enlisting, 79
- ARBITRATION, under PUBLIC HEALTH ACT, 389
- ARMS, &c., purchasing from soldier, 418; unlawful use of arms, *see* title 'weapon,' *infra*.
- ARMY DISCIPLINE ACT, *see* SOLDIER, 415
- ARREST, generally, 79; malicious arrest, 81; *see also* CONSTABLES, 134
- ARSENIC, rules as to the retail sale of, 84
- ARSON, 84
- ART, works of, maliciously damaging, 313 (17)
- ASSAULT, generally, 86; civil remedy barred by punishment or dismissal of charge, 88; cumulative sentences not to exceed six months, *ib.*; aggravated assault upon female or child, 89; assault upon police constable, *ib.*; indictable assaults, *ib.*; indecent assaults, *ib.* (6, 7); assault by wounding, shooting, choking, burning, &c., 90; assault with intent to rob, 91; upon Justice present at a wreck, 231; right of self-defence, 86, 325
- ASSEMBLY, unlawful, *see* RIOT, 410
- ASSIZES, offences triable exclusively at, 48
- ASYLUMS, lunatic, 307

- ATTEMPTING to commit offences, generally, 91; attempting to shoot, burn, rob, &c., 90; attempting to violate girl under twelve, 119; attempting murder, 327.
- ATTORNEY misapplying property, *see* AGENTS, 67; appearance by, *see* PRACTICE (4), 361; *see also* SOLICITORS, 421
- AUTREFOIS ACQUIT, *see* PRACTICE (14), 367
- BACKING warrant, 11, and Appendix V.
- BAGATELLE AND BILLIARDS, 104
- BAIL, 29, 91; 'discretionary' and 'compulsory' bail, 92; bail from police stations, 134
- BAILEE, defined, 291; stealing by, 295 (15)
- BAKERS, *see* BREAD, 108; bake-houses, 110
- BANK NOTES, offences relating to, 202, 204
- BANKERS misapplying property, *see* AGENTS, 67
- BANKRUPTCY AND FRAUDULENT DEBTORS, 94
- BARGES, offences committed in boats or barges *en route*, where cognisable, 9, 25; requisition of for military purposes, 420; *see also* CANAL BOATS, 111
- BASTARDY, 95; application for summons, 96; the summons, *ib.*; proceedings in petty sessions, 97; the Order, *ib.*; plaintiff's evidence, 99; defendant's evidence, *ib.*; enforcing order, 100; application by poor law guardians, 101; appeal, *ib.*
- BAWDY HOUSE, *see* DISORDERLY HOUSES, 150; using licenced premises as, 278 (11)
- BEER, *see* INTOXICATING LIQUOR, 259; beer-houses, 262
- BELL, wantonly ringing door-bell, *see* DISORDERLY CONDUCT, 149; POLICE OF TOWNS (4), 348
- BEGGARS, *see* VAGRANTS, 447, and 449 (5, 6, 13)
- BETTING and betting-houses, 218; story of a bet, 219; *see also* LOTTERIES, 302
- BICYCLES, 102; steam tricycle, 242
- BIGAMY, 103; a young French bigamist, *ib.*
- BILL OF EXCHANGE, forging, &c., 204
- BILL-STICKING, within Metropolitan Police District, 349 (9); a bill-sticker's revenge, 150 (*note*)
- BILLETING, *see* SOLDIER, 419
- BILLIARDS AND BAGATELLE, 104
- BINDING OVER, to prosecute, 29; to appear as witness, *ib.*; under the Vexatious Indictment Act, 254; to keep the peace or be of good behaviour, 433
- BIRCH-ROD, punishment for boys, 116; on summary conviction, 36, 38 escape of grocer's boy, 54; in prisons, 373

- BIRDS**, protection of under the Wild Birds Act, 105; stealing domesticated birds, 293 (3); killing or wounding same, 312 (6); *see* also **GAME** and **ROOKS**
- BIRTHS AND DEATHS**, registration of, 107
- BLASPHEMY**, 108; blasphemous libel, *ib.*; profane language, 348; profane swearing, 437
- BOATS**, *see* **BARGES**, *supra*; Sunday boating, 431
- BODILY HARM**, *see* **ASSAULT** (5, 7, 9, &c.), 89
- BODY**, finding dead, 107; digging up or disturbing, 323; should be accounted for before convicting of murder, 326; order to remove dead body from dwelling-house, 387
- BONFIRES**, *see* **FIREWORKS**, 200 and 348
- BOOKS**, falsifying, 173; seizure and destruction of obscene, 330; 'Fruits of Philosophy' ineffectually condemned, 331
- BOROUGHs**. Borough Justices, 282; concurrent jurisdiction of county Justices, when repelled, 283; police force in boroughs, 133; borough franchise, 170; intoxicating liquor licences, how granted in boroughs, 263; how confirmed, 264; boroughs under the Public Health Act, 378
- BREAD**, 108; must be sold by weight, 109; baker must provide scales, &c., *ib.*; lawful ingredients of bread, *ib.*; search-warrant, 110; Sunday work, *ib.*
- BREAKING AND ENTERING** defined, 245; breaking out, 246; breaking house doors to effect arrest, 80, 83; under warrant of distress, 151; to demolish a lottery, 302
- BRIBING CONSTABLE**, *see* **INTOXICATING LIQUOR LAWS**, 278 (12)
- BRIDGES**, *see* **HIGHWAYS**, 240; injuring, 313 (15)
- BROKER** misapplying property, *see* **AGENTS**, 67
- BROTHELS**, *see* **DISORDERLY HOUSES**, 150; on licenced premises, 278 (10, 11)
- BUILDINGS**, new, control of Local Authority over erection, &c., 377; ruinous or dangerous, jurisdiction of Justices as to, 388
- BURGLARY**, *see* **HOUSEBREAKING**, 246; right to kill the burglar, 247; or to catch him in a man-trap, 314
- BURNING**, damage by, *see* **ARSON**, 84; and **ASSAULT**, 90 (12)
- BYE-LAWS**, *see* **EDUCATION**, 167; **HIGHWAYS**, 241; and **RAILWAYS**, 394
- CANAL BOATS ACT**, 1877, 111
- CARD-SHARPERS**, *see* **VAGRANTS**, 450 (17); cheating at play, 219
- CARRIAGES**, *see* **DRIVING AND RIDING**, 156; impelled by steam, electricity, &c., upon the highway, 242; requisition of for military purposes, *see* **SOLDIER**, 420; offences committed in or upon carriages *en route*, 9, 25; infected carriages, 386

- CARTS, *see* TAXED CARTS, 437; using without name painted, 158; offences by drivers, &c., *see* DRIVING AND RIDING, *ib.*; 'lodging in any cart,' *see* VAGRANTS, 450 (10)
- CASE, stating for Superior Court, 78
- CASUAL PAUPER, *see* POOR, 351, 357
- 'CAT,' in prisons, 373
- CATTLE, *see* ANIMALS, *supra*; injuries to by dogs, 153
- CATTLE PLAGUE, 138
- CATTLE STRAYING, 112; right to distrain and impound trespassing cattle, 113
- CELLARS, living in, *see* PUBLIC HEALTH ACT, 382
- CENTRAL CRIMINAL COURT, 318
- CERTIFICATE of dismissal of charge, 15; effect of, in assault cases, 88
- CERTIORARI, *see* APPEAL, 74
- CHALLENGE TO FIGHT, *see* AFFRAY, 67, SURETY, &c., 433; resenting a challenge, 325; challenging jurors, 49
- CHARACTER, evidence as to in criminal proceedings, 114; a bad character given too late, 115 (*note*); servants' characters, 316; false characters, *ib.*; duties of ladies, 317
- CHEATING, *see* FALSE PRETENCES, 193; obtaining credit by fraud, 95; cheating at play, 219; the 'confidence trick,' 288
- CHEQUES, *see* FORGERY, 204 (8, 9, 10), and FALSE PRETENCES, 195
- CHILDREN, indictable offences by, dealt with summarily, 36, 55; observations on the punishment of, 115; abduction of girl under sixteen, 59 (3); assaulting children, 89 (2); neglecting, abandoning, stealing, or defiling, 118; selling fireworks to, 199; selling drink to, 277; taking goods in pawn from, 335; leaving chargeable to parish, 449 (1, 16); causing to beg, 449 (6); illegitimate, *see* BASTARDY, and as to the husband's obligation to support, 352; *see also* EDUCATION, 165; FACTORY ACT, 191; INDUSTRIAL SCHOOLS, 255; INFANT LIFE PROTECTION, 258; SETTLEMENT, 354; and
- CHILDREN'S DANGEROUS PERFORMANCES ACT, 120
- CHIMNEY SWEEPS, 120; fire in chimneys, 348
- CHLOROFORM, criminal administration of, 121
- CHURCH, misbehaviour in, 121; obstructing minister, *ib.*; breaking and entering, 122; property of goods in, *ib.*; damaging monuments or windows, 313; demolishing, *see* RIOT, 410
- CHURCHWARDENS, 122
- CITY OF LONDON, city justices, &c., *see* METROPOLIS, 317
- CIVIL DEBT, 43; not extinguished by imprisonment, 44
- CIVIL PROCEEDINGS, 42; evidence in, 184
- CLAIM OF RIGHT as an ouster of summary jurisdiction, *see* PRACTICE (13), 367

- CLERGYMAN, obstruction or violence to officiating, 121 ; practice as to appointing upon the commission, 282 ; may order removal of a lunatic, 306
- CLERK, stealing by, *see* LARCENY 297 (34) ; embezzlement by, 171
- CLERK OF THE PEACE, 122
- CLERKS TO JUSTICES, 125 ; Lord Bacon's 'ancient clerk,' 6
- CLOSE TIME, for wild birds, 105 ; for fish, 201 ; for game, 210, 214
- CLOSING ROAD, *see* HIGHWAYS, 239
- CLUBS, sale of intoxicating liquor in, 269
- COALS, sale of, 455
- COAST, jurisdiction on, *see* HIGH SEAS, 228
- COCKFIGHTING, 147 ; cutting cocks' combs, 146
- COIN AND COINAGE, matters and offences relating to, 125 ; jewellers and the coin of the realm, 126 (*note*)
- COLORADO BEETLE, 128
- COMBINATION, unlawful, *see* WORKMEN (5), 461 ; *see also* CONSPIRACY, 131
- COMMITMENT WARRANT, 17 ; form of, Appendix XII.
- COMMITTAL FOR TRIAL, 24 ; in what county, 30
- COMMITTEE, licencing, *see* INTOXICATING LIQUOR, 264
- COMMUNICATION, privileged, 317 ; and SOLICITORS, 422
- COMPENSATION, in trifling offences, 37 ; in cases of assault, 88 ; in larceny, 293 ; in malicious injury, 311 ; under Public Health Act, 390 ; under the Lands Clauses Act (property taken for railway purposes, &c.), 394
- COMPLAINT, the course of proceeding in non-criminal matters, 42
- COMPOUNDING OR COMPROMISING offences, 128 ; *see also* PROSECUTION OF OFFENCES ACT, 376
- COMPUTATION OF TIME, *see* TIME, 441
- CONCEALMENT, of birth, 130 ; of felony, 196
- CONFESSION, *see* EVIDENCE, 177
- CONFIDENCE TRICK, 288
- CONFIRMATION of licences, *see* INTOXICATING LIQUOR, 264
- CONSPIRACY, 131 ; conspiracy to seduce, 132 ; to murder, 327
- CONSTABLES, 133 ; arrest by, 80 ; right to retain prisoner by force, 82 ; officer in plain clothes, *ib.* ; declining to assist constable, *ib.* ; assaulting constable, 89 (3), 91 (15) ; resisting or inciting to resist, 133 ; killing, 326 ; duties with regard to persons apprehended—questioning and searching prisoners, &c., 134. Evidence of police constables, 182. *See also* INTOXICATING LIQUOR LAWS, 278 (12), 279 (15)

- CONTAGIOUS DISEASES (ANIMALS) ACT, 137; cattle plague, 138; glanders, &c., *ib.*; pleuropneumonia, 139; foot and mouth disease, 140; foreign animals, *ib.*; offences and proceedings, 141
- CONTEMPT OF COURT, *see* PRACTICE (5), 362
- CONVERSION of property, unlawful, *see* AGENTS, 67; EMBEZZLEMENT, 171; LARCENY, 287
- CONVICTION, must be by voice of a majority of the Court, 6; on 'view' of Justice, 283; upon proceedings by information, 15; may be waived in trifling cases, 37; for indictable offence under the Summary Jurisdiction Act, 41; *previous* conviction when a bar to proceedings under that Act, *ib.*; conviction when an answer to further proceedings for the same cause, *see* ASSAULT, 88; MALICIOUS INJURIES, 311, and *res judicata*, 367. Evidence of *previous* summary conviction, 15; consequences of *second* conviction upon indictment, 368; *see also* REGISTER, 406. Conviction under Intoxicating Liquor Acts, when to be indorsed on licence, 268. Forms of conviction, *see* Appendix VIII, IX.
- CORONER, 141. Inquest, when necessary, *ib.*; power of coroner to require accused person to be brought before him, 142
- CORPSE, *see* BODY, *suprà*
- CORPORAL PUNISHMENT, *see* BIRCH-ROD, *suprà*
- COSTS, 142, 427 (3); in indictable cases, 143; of witnesses, 459
- COUNSEL, *see* PRACTICE (4), 361, and SOLICITORS, 421
- COURT, petty sessional, 4, 5; an open court, 362
- COURT-HOUSE, 3; occasional, 5, 51, 58
- CREDIT, obtaining under false pretences, 95
- CRIME AND CRIMINALS, *see* PREVENTION OF CRIME, 368
- CRIMINAL CHARGE, meaning of term, 42; withdrawing, *see* COM-
FOUNDING, 128, and PROSECUTION OF OFFENCES, 376
- CRUELTY to animals, 144; to children, 118
- CUSTOS ROTULORUM, 122 (*note*)
- DAMAGE to property, *see* MALICIOUS INJURIES, 310; MISCHIEF, 322
- DAMAGES, *see* COMPENSATION, *suprà*
- DANGEROUS and ruinous buildings, 388; dangerous dogs, 153; animals, 329; diversions, 120, 324; trades, 329; goods on railways; 398 (4), or on board ship, 230
- DAY, *see* TIME (computation of), 441; day-time, 200
- DEAD BODY, *see* BODY, *suprà*
- DEBTORS, fraudulent, 94
- DEBT, 43; civil, 44; imprisonment in respect of, 'Debtors' Act,' 45
- DECLARATION, in lieu of oath, 330; and *see* EVIDENCE, 179
- DEER-STEALING, 293

-
- DEFENDANT, when 'criminally' charged, 42; non-appearance of, 359; when may give evidence, 181, 184
- DEFILEMENT, or procuring defilement, 119 (4, 5); *see also* CONSPIRACY, 132
- DEMANDING money with menaces, *see* LARCENY, 288, 296 (29); ACCUSING OF CRIME, 60
- DEPOSITIONS, 27; of witness dangerously ill, 459
- DESETER, *see* SOLDIER, 417; MILITIA, 320; sailors deserting or refusing to join ship, 230
- DESERTED PREMISES, giving possession of, 286
- DESERTING family, *see* VAGRANTS, 449 (1, 15); wife, 249
- DETAINING property, 148; person, *see* HABEAS CORPUS, 223
- DISEASE, infectious, *see* PUBLIC HEALTH ACT, 386
- DISEASED ANIMALS, *see* CONTAGIOUS DISEASES, *supra*; diseased meat, &c., 384
- DISMISSAL of charge,—certificate, 15, 37, 88, and Appendix XI.; *see also* COSTS, 142
- DISORDERLY CONDUCT, 149; drunk and disorderly, 164; *see also* RIOT
- DISORDERLY HOUSES, 150
- DISQUALIFICATION OF JUSTICES, *see* PRACTICE (11), 364; INTOXICATING LIQUOR, 274
- DISTILLING, *see* SPIRITS ACT, 423
- DISTRESS, 18, 19, 150; of goods in Scotland, 151; tenant removing goods to avoid, 438; of cattle *damage feasant*, 113
- DISTURBING the peace, 149; congregation in church, &c., 121
- DIVIDED PARISHES ACT, *see* POOR, 355
- DIVISIONS, petty sessional, 3, 8
- DIVORCE, *see* 'summary judicial separation,' 251
- DOCUMENTARY evidence, 184
- DOGS, ownership of, 151; dog-stealing, 152; unlawful possession of, *ib.*; killing or wounding, *ib.*; sheep-biting and mischievous dogs, 153; dangerous dogs, *ib.*; stray dogs, 154; mad dogs, *ib.*; dogs drawing, 155; dog licences, *ib.* *See also* GAME, 209, and POISON, 345
- DOORS, breaking by constables, *see* ARREST, 80, 83; DISTRESS, 151; wantonly knocking or ringing at, 149
- DRAINS, *see* HIGHWAYS, 237; PUBLIC HEALTH ACT, 379; foul drains, as nuisances, 383
- DRINK, *see* DRUNKENNESS, 160; HABITUAL DRUNKARDS, 224; INTOXICATING LIQUOR LAWS, 259; selling without licence, 277; drinking 'on the premises,' 270
- DRIVING AND RIDING, offences connected with, 156
- DRUGS, sale of, *see* POISON, 344; drugging animals, 160

- DRUNKENNESS**, how far, in any sense, an excuse for crime, 160 ; story of the tradesman and the pot-boy, 161 ; drunkenness in public place, 163 ; penalty for simple drunkenness, 164 ; for being drunk and disorderly, or drunk while in charge of carriage, &c., or of loaded firearms, or while on licenced premises, *ib.* ; landlord, when entitled to be drunk, *ib.* ; postman drunk, 358 ; railway servant, 397 ; passenger on board steamer, 231
- DWELLING HOUSE**, stealing from, *see* LARCENY, 287, 296 (30, 31) ; trespass on, 442 ; *see also* HOUSEBREAKING, 245 ; and, as to constable's right to enter in pursuit, ARREST, 80, 83 ; setting fire to, *see* ARSON, 85 (2)
- DYING** declaration, *see* EVIDENCE, 180
- DYNAMITE**, for killing fish, 165 ; as an explosive, 186 ; using, making, or keeping it for an unlawful purpose, 473
- EARLY CLOSING** licences, 266
- EDUCATION**, elementary, 165 ; order to attend school, 166 ; meaning of word 'attendance,' 167 ; school board bye-laws, *ib.* ; excuses for non-attendance, 168 ; factory children, 169
- EGGS**, *see* BIRDS, 106 ; **GAME**, 210
- EJECTMENT**, *see* LANDLORD AND TENANT, 285
- ELECTION**, parliamentary franchise, 170
- EMBEZZLEMENT**, by clerk or servant, 171 ; by co-partners, 297 (36) ; falsification of accounts, 173
- EMPLOYERS AND WORKMEN ACT**, 173
- ENCLOSED PREMISES**, *see* TRESPASS, 443
- ENCROACHING** upon highway, 238
- ENLISTMENT**, *see* MILITIA, 319 ; **SOLDIER**, 415 ; of apprentice, 79
- ESCAPE** of prisoner, preventing, *see* ARREST, 82
- ESTREATMENT** of recognisances, 404
- EVIDENCE**, 175 ; circumstantial, 176 ; presumptive, arising from the possession of stolen goods, 292 ; confession of accused, 177 ; rules of evidence, 178 ; witnesses, summons and warrant for, 12 ; form of summons, Appendix VI. ; how sworn, and when excused from oath, 179 ; dying declarations, 180 ; examination of witnesses, *ib.* ; evidence of parties in criminal proceedings—their husbands and wives, 181 ; evidence of police constables, 182 ; evidence of parties in civil proceedings, 184 ; documentary evidence, *ib.* ; *see also* BASTARDY, 99 ; INTOXICATING LIQUOR, 276 ; REGISTER, 406 ; and title WITNESSES, *infra*
- EXAMINATION**, preliminary, in indictable cases, 24 ; of the person, 136
- EXCISE**, 185 ; Excise prosecutions, *ib.*
- EX PARTE** proceedings, 359 ; in BASTARDY, 100
- EXPENSES**, *see* COSTS, 142

- EXPLOSIVES, criminal use of, 90 (11, 12, 13) ; see also 473
- EXPLOSIVES ACT, 185 ; explosives classified, 186 ; gunpowder stores, *ib.* ; sale of gunpowder and fireworks by retail, 187 ; gunpowder, &c., for private use, 188 ; legal proceedings and offences, *ib.*
- EXPOSING children, 119 ; exposing person, see INDECENCY, 253
- EXTORTION, see ACCUSING OF CRIME, 60 ; THREATENING LETTERS, 440
- EXTRADITION OF CRIMINALS, 190
- FACTORY ACT, 191 ; textile and non-textile factories, *ib.* ; workshops, 192 ; inspectors, *ib.*
- FAIRS, see MARKETS AND FAIRS, 314
- FALSE accounts, 173
- FALSE imprisonment, action for, see ARREST, 81 ; see also HABEAS CORPUS, 223
- FALSE PRETENCES, 193 ; Summary Jurisdiction inapplicable except in the case of a child, 55 ; anecdote in point, 56 ; seduction under, 120 ; collecting alms under, 450 (14)
- FALSE weights, 457 (9, 10) ; warranty of food, &c., 64
- FAMILY, leaving chargeable, see VAGRANTS, 449 (1, 15)
- FEEs, see CLERKS TO JUSTICES, 125, and Appendix XIX.
- FELONY, 196 ; misprision of felony, 197 ; receiving goods obtained by, *ib.* ; consequences of a second conviction, 368 ; loitering with intent to commit, 82, 451
- FENCES, encroaching on highway, 238 ; stealing, 294 ; breaking, 312
- FIGHTING, 66 ; ARREST, 80 ; MANSLAUGHTER, 325 ; RIOT, 410
- FINDING property, 197
- FINES, power to mitigate, 16 ; when may be imposed in lieu of imprisonment, *ib.* and 392 ; giving time for payment, and accepting security, 17, 52 ; enforcing by alternative imprisonment, 17 ; by distress, 18 ; fines not exceeding 5s., 427 (3) ; scale of imprisonment on non-payment, 428. Fines in the case of children, 36, 55, 116 ; of married women, 252. Application of fines, 23, and see EXCISE, 185 ; see also PUNISHMENT, 390
- FIRE, see ARSON, 84 ; on highway, 244 ; in chimney, 348
- FIREARMS, drunkenness when in charge of loaded, 164 ; wantonly discharging in public, 244, 348 ; tax upon, see GUN LICENCE, 221 ; incautious use of, 324
- FIREWORKS, 199 ; retail sale of, 187
- FISH AND FISHING, 200 ; close time for freshwater fish, 201 ; damaging fish-ponds, 313 ; selling unwholesome fish, 384
- FIXTURES, stealing, see LARCENY, 296 (23), 297 (35)
- FLOGGING, see BIRCH-ROD, *supra*
- FOOD AND DRUGS, adulteration of, 61 ; flour, 110

- FOOD, unwholesome, exposed for sale, *see* PUBLIC HEALTH, 384
- FOOTPATH, riding, &c., upon, 159, 347
- FOREIGNERS, *see* ALIENS, 70; extradition, 190
- FORFEITED GOODS (proceeds go as fines, S. J. Act. 1879, sec. 39)
- FORGERY, 202
- FORTUNE-TELLING, *see* VAGRANTS, 450 (9)
- FOUND offending, 81; on enclosed premises, *see* TRESPASS, 443
- FOX-HUNTING, confers no right to cross private land, 211
- FRAUD, *see* FALSE PRETENCES, 193; *see also* AGENTS, 67. Fraudulently collecting alms, 450 (14)
- FRAUDULENT DEBTORS, 94
- FRAUDS, Statute of, 68
- FRUIT-STEALING, *see* LARCENY, 294 (10), 296 (25); *see also* MALICIOUS INJURIES, 312 (2)
- FURIOUS DRIVING, or riding, 159 (13)
- GAME, 205; property in wild animals, *ib.*; definition of game—hares, 207; Ground Game Act, 1880, 208; licence to kill game, 209; killing out of season, 210; destroying game, eggs, &c., *ib.*; trespass in search of game, 211; trespass in the day-time, *ib.*; in the night-time, 212; Poaching Prevention Act—derivation of word 'poacher,' *ib.*; licences to deal in game, 213; offences by licenced dealers, 214; buying and selling game, *ib.*; legal proceedings, *ib.*
- GAMING, 215; difficulties in the way of legislation, *ib.*; gaming-houses, 217; betting-houses, 218; Betting Act, 1874—betting advertisements, *ib.*; cheating at play, 219; wagers null and void, *ib.*; gambling on the Stock Exchange, *ib.*; bet upon a walking match, *ib.*; gaming upon licenced premises, 270; gaming in public, *see* VAGRANTS, 450 (17); on railway, *ib.*
- GAOL, *see* PRISON, *infra*
- GARDENS, stealing from, 294 (10); damaging, 312 (2), 313 (11)
- GAROTTING, *see* ASSAULT, 90 (10, 17)
- GAS, 220; gas rents, *ib.*; fraudulent use of gas, *ib.*; meters, *ib.*; gas supply, 221; illuminating power, testing, *ib.*
- GATES, stealing, &c., 294 (8)
- GENERAL SESSIONS, 47
- GIPSIES, 447; encamping on highway, 244
- GLANDERS, 138 (*note*)
- GLASS, as a measure of beer, 278 (*note*)
- GLEANNING, 221
- GOOD BEHAVIOUR, *see* SURETY OF THE PEACE

- GRAIN, *see* BREAD, 109; sale of poisoned, 345
- GRAND JURY, 48; and *see* INDICTMENT, 254
- GROCCERS selling drink, 272
- GROUND GAME ACT, 208
- GUARDIANS, poor law, 283
- GUILTY, intent *see* PRACTICE (12), 366
- GUN, *see* FIREARMS, *suprd*; gun licence, 221
- GUNPOWDER, *see* EXPLOSIVES, 186; injury by, *see* ASSAULT, 90 (11, 12, 13)
- HABEAS CORPUS, 223
- HABITUAL CRIMINALS, 368; register of, 369
- HABITUAL DRUNKARDS ACT, 224
- HACKNEY CARRIAGES, 225; penalty on infected person entering, 386
- HARBOURS, *see* HIGH SEAS, 228; petroleum in, 343
- HARD LABOUR, 226
- HAWKERS, 226; hawking petroleum, 342; spirits, 425
- HEALTH, *see* PUBLIC HEALTH ACT, *infrd*
- HEARING of case, 13
- HIGH SEAS, 228; Admiralty jurisdiction, *ib.*; offences committed at sea, *ib.*; Merchant Shipping Act, 229
- HIGHWAYS, 231; highway parishes, 232; districts, *ib.*; sessions, 234; surveyor's liabilities, 235; contracts by surveyor, 236; width of roads, &c., *ib.*; materials for road repair, 237; ditches and drains, *ib.*; trees and hedges, *ib.*; obstructions on highways, 238; encroachments, *ib.*; steam-engines, windmills, &c., *ib.*; diverting or closing road, 239; discontinuance of unnecessary highways, 240; widening road, *ib.*; temporary road, *ib.*; bridges, *ib.*; main roads, 241; extraordinary traffic, *ib.*; bye-laws by county authority, *ib.*; locomotives on highways, 242; mechanical carriages, *ib.* (*note*); highway offences in general, 244; Local Government provisions, 387
- HOMICIDE, *see* MURDER AND MANSLAUGHTER, 323
- HOP-BINDS, damaging, 313 (10)
- HORSES, *see* DRIVING AND RIDING, 156; cruelty to, 144; frightening on highway, 245; injuries to by dogs, 153; stealing, 295 (16); killing or maiming, 313 (18); glandered horses, 138 (*note*); horses at livery distrainable for rent, 302; requisition of for military purposes, 420; *see* also MARKETS AND FAIRS, 314
- HOSPITAL, in lunacy, 304
- HOUSE, unfit for habitation, 383; feloniously demolishing, 410
- HOUSEBREAKING, 245; burglary, 246
- HUNDRED, liability of for damage by riot, 412

HUNTING, *see* GAME, 211

HUSBAND AND WIFE, generally, 248; evidence of, 181, 184; communications between, absolutely privileged, 184; order to protect wife's earnings, &c., 249; 'Married Women's Property Act, 1882,' 250; summary judicial separation, 251; criminal liability of wife, 252; must pay her own fine, *ib.*; stealing from husband, *ib.*; order to maintain, 353; leaving chargeable to the parish, *see* VAGRANTS, 449 (1, 15); settlement of, *see* POOR, 354

IDLE AND DISORDERLY persons, *see* VAGRANTS, 449

ILLEGITIMATE children, *see* BASTARDY; obligation of husband to support, 352

IMPOUNDING cattle, 113; neglecting to feed while in pound, 147

IMPRISONMENT, scale of, in relation to fines, 428; imprisonment *versus* distress, 19; false imprisonment, 81, and *see* HABEAS CORPUS, 223; imprisonment for debt, 45; treatment of prisoners, *see* PRISONS, 372; *see* also CHILDREN, 115; HARD LABOUR, 226; and PUNISHMENT, 390

INCITING to crime, 370

INCORRIGIBLE ROGUES, *see* VAGRANTS, 451

INDECENCY, 252; indecent assault, 89 (6, 7), and *see* CHILDREN, 119

INDICTABLE OFFENCES, 7; committal for trial upon, 24; in what county, 30; summary jurisdiction in respect of, 34; *see* also Note on Summary Jurisdiction Act, 53, and INDICTMENT, 254

INDICTMENT, how prepared and found, 48; Vexatious Indictments Act, 254

INDUSTRIAL SCHOOLS, 255; Feltham, 257

INFANTS, *see* CHILDREN, *supra*; INFANT LIFE PROTECTION ACT, 258

INFECTIOUS DISEASES, *see* PUBLIC HEALTH ACT, 386

INFORMATION, 9, 259; form of, Appendix I.; when must be verified by oath, 9; in indictable cases, 26

INFORMER, 67, 128, 158, &c.

INLAND REVENUE, *see* EXCISE, 185

INNKEEPER, 260; when bound to supply traveller, 273; *see* also LIEN, 301, and SOLDIER, 419

INNOCENCE, presumption in favour of, 176

INSANITY, *see* LUNATICS, 304

INTENTION, criminal, *see* PRACTICE (12), 366

INTERESTED JUSTICES, *see* PRACTICE (11), 364

INTIMIDATION in trade, 460 (4); intimidating witnesses, 459

INTOXICATING LIQUOR LAWS, 259

- I. LICENCES IN GENERAL, 259
- II. LICENCING AND LICENCEES (granting licences—beer-houses—confirmation of licences—provisional licences—renewal of licences—transfer of licences—temporary transfers and protection order—removal of licences—six-day and early closing licences—occasional licences—register of licences—indorsing licences—effect of repeated convictions), 261
- III. RULES AND REGULATIONS (name on premises—sale of liquor—sale under 'off' licence—gaming upon licenced premises—disorderly persons—hours of opening and closing—travellers and lodgers—private friends of landlord—exemption from closing—refreshment houses—closing in case of riot), 269
- IV. LEGAL PROCEEDINGS (disqualification of Justices—entry upon premises and search warrant—evidence—punishment and penalties—forfeitures—appeal—saving clauses), 274
- V. OFFENCES, by licenced persons, 277; by other than licenced persons, 279

IRREGULARITY in proceedings, *see* PRACTICE (3), 360

JERVIS' ACTS, 8

JEWS, evidence of, 179

JOINT OFFENDERS, 10, 182

JUDGMENT SUMMONS, 45

JURISDICTION, limits of, 3, 8, 24, 358; and *see* SUMMONS, 429

JURORS and JURY LISTS, 280; qualification and exemptions—special jurors, *ib.*; grand jury, 48; petty jury, 49; episodes in trial by, 54, 115; right to demand trial by, 13, 53; jury-book, 124

JUSTICES, *see* Preliminary Notes, Chap. I.; and as to their qualification, appointment, &c., &c., 282; actions against Justices, 285; disqualification under the Licensing Acts, 274; Justice declining to act, 10, 76; Justice interested, 364; recent legislation opposed to the single jurisdiction, 51; and *see* PUNISHMENT, 390

JUVENILE OFFENDERS ACT (repealed), 35; proceedings against young persons charged with indictable offences, *ib.*; observations on the punishment of juvenile offenders, 115; and *see* CHILDREN, *supra*

LANDLORD, *see* analysis of note on INTOXICATING LIQUORS, *supra*

LANDLORD AND TENANT, summary ejectment, 285; deserted premises, 286; tenant removing distrainable goods, 438; stealing fixtures, 297

LANDS CLAUSES ACT, 394

LARCENY, general observations, 286; defined, 287; larceny by servant distinguished from embezzlement, 290; larceny by bailee or temporary holder, 291; presumptive evidence of theft, 292; unlawful possession, *ib.*; summary jurisdiction in larceny, *ib.*; indictable felonies, 295

- LETTER, threatening, 440; libellous, 297
- LETTERS, offences relating to, *see* POST OFFICE, 358
- LIBEL, 297; 'Newspaper Libel Act,' 299
- LICENCED PREMISES, misbehaviour on, 165; use of at elections, 170; gaming on, 270; making additions to, 263; and *see* analysis of note on INTOXICATING LIQUORS, *suprd*
- LICENSED VICTUALLER, 260. As regards his liability to entertain traveller, 272; to receive soldiers on billet, 419
- LICENCES (liquor), *see* as above; selling liquor without licence, 277; for billiard, game, gun, dog licences, &c., *see* the various heads
- LIEN, 301
- LIGHTS, masking or showing false at sea, 313; extinguishing street lamps, 348
- LIMITATION of time for summary proceedings, 9
- LOCAL GOVERNMENT, *see* PUBLIC HEALTH ACT, *infrd*
- LOCOMOTIVES, road, *see* HIGHWAYS, 242
- LODGER, defined, 302; stealing fixtures by, 297; lodgers under the INTOXICATING LIQUOR ACTS, 272; 'Lodgers' Goods Protection Act,' 301
- LODGING HOUSES (common) must be registered, &c., 383; search for vagrants in, 449; letting infected lodgings, 386
- LOITERING with felonious intent, 82, 451; prostitute, 348
- LONDON, *see* METROPOLIS, 317
- LOST PROPERTY, *see* FINDING, 197
- LOTTERIES, 302; a 'shower of gold,' 303
- LUNATICS, 304; private lunatics, *ib.*; visitors of lunatics, 305; pauper and quasi-pauper lunatics, 306; criminal lunatics, 307; county asylums, *ib.*; Hanwell, 308; marriage of ex-lunatic, 309
- MAD DOGS, 154
- MAGISTRATE, stipendiary, 6; generally, *see* JUSTICES, *suprd*
- MAIN ROADS, *see* HIGHWAYS, 241
- MAINTENANCE by relations, *see* POOR, 352
- MALICIOUS ARREST, action for, 81
- MALICIOUS INJURIES, defined, 310; offences punishable summarily, 311; indictable offences, 312; to the person, 90
- MANDAMUS, *see* APPEAL, 76
- MANSLAUGHTER, 323; punishment of, 327
- MAN-TRAPS, 314
- MARINE STORES, *see* OLD METAL, 331, and HIGH SEAS, 231
- MARKETS, 314; market-overt, *ib.*

- MARRIAGE and married women, *see* HUSBAND AND WIFE, *suprà*; marriage of lunatic patient in county asylum, 309; 'Married Women's Property Act, 1882,' 250
- MASTER AND SERVANT, 315; points and offences relating to character, &c., 316; *see also* EMPLOYERS and WORKMEN, 173
- 'MAY,' when to be read as 'must,' 77
- MAYOR OF BOROUGH, 283
- MEASURES, *see* WEIGHTS AND MEASURES, 458; liquor, 277 (5)
- MEAT, unwholesome, 384; poisoned, 345
- MEMORANDA, when may be used to refresh memory, 180
- MENACES, demanding property with, 288, 296 (29); no justification for assault, 87, 325; *see also* SURETY OF THE PEACE, 433
- MERCHANT SHIPPING ACT, 229
- METAL, *see* OLD METAL, 331; stealing metal from buildings, &c., 296
- METROPOLIS—Metropolitan police district—central criminal court—city Justices—police magistrates, 317
- MILITARY LAW, *see* SOLDIER, 415
- MILITIA, 318; embodying of force, 319; enlistment, *ib.*; fraudulent enlistment, *ib.*; deserters, 320; persuading to desert, *ib.*
- MILK and milk-shops, 321
- MINES, firing, 86; stealing from, 296; damaging, 313
- MINT offences, *see* COIN, 125
- MINUTE of conviction, 15; of order, 44
- MISCARRIAGE, causing, *see* ABORTION, 60
- MISCHIEF—meaning no harm—practical jokes, 322
- MISDEMEANOUR, 322
- MISDESCRIPTION, *see* VARIANCE, *infra*
- MITIGATION of penalties, 16
- MONEY, *see* COIN, 125; found on prisoner, 136; on vagrant, 449
- MONTH, *see* TIME, computation of, 441
- MONUMENT, damaging public, 313
- MURDER and MANSLAUGHTER, 323
- MUSHROOMS, 413
- MUSIC AND DANCING licences, 328; street music, 350
- MUTINY ACT, *see* SOLDIER, 415
- NATURALIZATION, *see* ALIENS, 70
- NEGLECTING to maintain family, &c., *see* VAGRANTS, 449, (1, 15)
- NEWSPAPERS (Libel Act), 299
- NIGHT-TIME, 200, 246; night poaching, 212
- NON-APPEARANCE of plaintiff or defendant, 359, 360

- NOTICE to produce documents, *see* EVIDENCE, 184
- NUISANCE, 328 ; on highway, 244 ; in streets, *see* POLICE OF TOWNS (3, 4), 347 ; keeping swine, 381, and Appendix, XIV.
- OATHS, *see* EVIDENCE, 179 ; oaths taken by Justices, 282 ; unlawful oaths, 329 ; declaration in lieu of oath, 330 ; false oaths—perjury, 339 ; profane oaths, 437 ; information, when required to be upon oath, 9, 12
- OBSCENE LANGUAGE, *see* INDECENCY, 252 ; obscene books, prints, and 'Fruits of Philosophy,' 330 ; letters, 474
- OBSTRUCTIONS, *see* HIGHWAYS, 244 ; NUISANCE, 328 ; POLICE OF TOWNS (3), 347 ; RAILWAYS, 397 (2), 398 (6, 8)
- OBTAINING goods, *see* FALSE PRETENCES, 193
- OCCASIONAL court-house, 5, 58 ; occasional licence, 267
- OFFENCES, generally, 7 ; indictable and non-indictable, *ib.* ; trifling offences, 37 ; law must not be strained to *make* an offence, 284 ; indictable offences, committal for trial upon, 24 ; dealt with summarily, 34 ; offences in boats or carriages *en route*, 9, 25 ; upon the high seas, 228 ; against public order, *see* DISORDERLY CONDUCT, 149 ; DRIVING AND RIDING, 158 ; HIGHWAYS, 244 ; and POLICE OF TOWNS, 346 ; locality of offences, 3, 8, 25, 30, 229
- OFFENSIVE language, 60, 87, 325 ; offensive trades, 384
- OLD METAL DEALERS, 331
- OPEN COURT, 5, 24
- ORDER, upon complaint, 43 ; form of, Appendix, XV., XVI.
- OUSTER of jurisdiction, *see* PRACTICE (13), 367
- OVERSEERS, *see* POOR, 350
- PARENTS, liability to maintain children, *see* POOR, 352 ; VAGRANTS, 449 (1, 15, 16)
- PARISH SETTLEMENT, 354
- PARLIAMENTARY ELECTIONS, franchise, 170
- PARTNER, stealing by, 297 (36)
- PATENT MEDICINES, *see* POISON, 344
- PAUPER, casual, 351, 357 ; pretended, 449 (7) ; refractory, 357
- PAWNBROKERS, 332 ; servant of pawnbroker, *ib.* ; interest on loans, 333 ; pledges and pawn-tickets, *ib.* ; property unlawfully pawned—restoration to owner, *ib.* ; search-warrant, 334 ; right to detain customer, *ib.* ; offences by pawnbrokers, 335
- PAWNING, unlawful, 336
- PEACE, breach of the, *see* AFFRAY, 66, ARREST, 80, Riot, 410 ; disturbing the peace, *see* DISORDERLY CONDUCT, 149 ; *see also* SURETY OF THE PEACE, 433
- PEDLAR, 337 ; certificate, *ib.* ; offences by, 338

- PENALTIES, *see* FINES, *suprà*
- PERJURY, 339
- PERMISSIVE words, when imperative, 77
- PERSON, stealing from the, 39, 296 (27); examination of the, 136 ; indecently exposing, 253
- PETROLEUM, 340 ; licences, 341 ; hawking, 342
- PETTY SESSIONAL COURT, 4 ; Court house, 58
- PICK-LOCKS, possession of with intent, &c., 450 (18)
- PIGS, as a nuisance, 381
- PITCH AND TOSS, 450
- PLANTS, stealing, 294 (10, 11); damaging, 312 (2, 3)
- PLEDGING, *see* PAWNBROKER and PAWNING, *suprà*
- PLEUROPNEUMONIA, 189
- POACHING, *see* GAME, 207 ; 'Poaching Prevention Act,' 212
- POISON, criminal administration of, 344 ; sale of poison, *ib.* ; patent medicines, *ib.* ; poisoned grain, 345 ; poisoned flesh—poisoning a dog, *ib.* ; *see also* ARSENIC, 84, FISHING, 202, and GAME, 210
- POLICE, *see* CONSTABLES, *suprà* ; police magistrates of metropolis, 318 ; police supervision, 368
- POLICE OF TOWNS. 'Towns' Police Clauses Act,' incorporated with 'Public Health Act,' 346 ; street nuisances, &c., *in extenso*, 347
- POLLUTED wells, closing, 382
- POOR, 350. Overseers, *ib.* ; poor-rate, *ib.* ; relief in general, 351 ; permanent relief—maintenance by relations, 352 ; settlement and removal, 354 ; workhouse discipline, 357
- POSSESSION of premises, giving, *see* LANDLORD AND TENANT, 285
- POSSESSION of stolen goods, *see* LARCENY, 292 ; unlawful possession, *ib.* ; of tree, fence, &c., 294 (9) ; *see also* OLD METAL, 331, and RECEIVERS, 402
- POST OFFICE, 358 ; *see also* STAMPS, 425
- POUND, parish, *see* CATTLE-STRAYING, 113 ; obligation to feed impounded animals, 147 ; pound-breach, 113
- POWDER MAGAZINES, 186
- PRACTICE, *i.e.*, rules regulating the administration of the law, and the transaction of judicial business, 359
- PRELIMINARY EXAMINATION, 24
- PRESUMPTION of innocence, 176 ; against person withholding evidence, 178 ; of guilt from unexplained possession of stolen property, 292
- PRETENCES, false, 193 ; obtaining credit under, 95
- PREVENTION OF CRIMES ACT, 368 ; letter from a High Constable, 369
- PREVIOUS CONVICTION, upon indictment, effect of, 368 ; under the Summary Jurisdiction Act, sec. 14, 41

- PRINCIPAL AND ACCESSORY**, 370; liability of persons who aid or counsel crime, 371; accessory after the fact, *ib.*; accomplice turning Queen's evidence, *ib.*
- PRISONERS**, *see* **CONSTABLES**, 134; cost of conveying to prison, 18; treatment of apprehended persons, 134; questioning and searching them, 135; property taken from them, &c., 136; prisoner may make his own statement, even if defended by counsel, 361
- PRISONS**, 372; prison commissioners, *ib.*; visiting committee, *ib.*; corporal punishment, *ib.*; prison discipline, 373; ordinary diet, 375; punishment diet, *ib.*; story of a prison mouse, Appendix XX.
- PRIVATE** premises, trespass on, 442; private prosecutor, 81, 128; private theatricals, 439
- PRIVIES** must be provided in new houses, 380; emptying, 350
- PRIVILEGED** communications, 317, 422
- PRIZE FIGHT**, *see* **AFFRAY**, 66
- PROFANE LANGUAGE**, 437; *see also* **BLASPHEMY**, 108
- PROPERTY**, taken from prisoners, 136; finding, 197; in wild animals, 205; damage to, 310, 322; restitution of stolen, 407; 'Conspiracy and Protection of Property Act,' 460
- PROSECUTION OF OFFENCES ACT**—Public Prosecutor, 376
- PROSECUTOR**, private, 81; liability for 'malicious arrest,' &c., *ib.*; legal position, 128; binding over to prosecute, 29; as a witness, 181, 363; his or her husband or wife may give evidence, *ib.*; costs of prosecution, 125, 142; Public Prosecutor, 376
- PROSTITUTE**, behaving indecently, 449 (4); loitering and importuning, 348 (4); harbouring on licenced premises, 278 (10); in house or room of public resort, 349 (7); child living with prostitutes, 256
- PROTECTION** of Justices, 285
- PROTECTION ORDER** (married women), 249; in respect of licenced premises, 266
- PROVISIONAL** licence, 264
- PROVOCATION** as an excuse for retaliatory violence, 87, 325
- PUBLIC** building, setting fire to, 85 (5); damaging property in museum, &c., open to public, or public monument, 313 (17)
- PUBLIC HEALTH ACT**, 1875, 377
- I. **AUTHORITIES** FOR ITS EXECUTION in urban districts, 378; in rural districts, *ib.*; legal proceedings, 379
 - II. **SANITARY PROVISIONS**:—sewers and drains, 379; disposal of sewage, 380; privies, waterclosets, &c., *ib.*; scavenging and cleansing, 380; water supply, 381; polluted wells, 382; cellar dwellings, *ib.*; common lodging houses, 383; nuisances, *ib.*; ships, 384; offensive trades, *ib.*; unwholesome meat, vegetables, &c., *ib.*; infectious diseases, 386; infected lodgings, *ib.*; epidemic disease, 387; mortuaries and dead bodies, 387

PUBLIC HEALTH ACT, 1875—*continued*.

III. LOCAL GOVERNMENT PROVISIONS:—highways, 387; towns' improvement clauses, ruinous and dangerous buildings, 388; police regulations, *ib*.

IV. MISCELLANEOUS:—arbitration clauses, 389; expenses in urban districts, *ib*.; in rural districts, *ib*.; entry upon lands, *ib*.; obstruction to local authority, 390; compensation for damage, *ib*.

PUBLIC HOUSES, *see* analysis of note on INTOXICATING LIQUORS, *suprd*

PUBLIC PLACE, drunkenness in, 164; throwing fireworks in, 199; indecency in, 253; begging in, 449 (5); gaming in, 450 (17)

PUMP, public, order to close, 382

PUNISHMENT, generally, 390; of children, 115

QUAKERS, evidence of, 179

QUALIFICATION of Justice, 282

QUARRELLING, on licenced premises, 164, 165

QUARTER SESSIONS, when held, 47; jurisdiction of, *ib*.

QUASHING CONVICTION, 50, 76

QUEEN'S BENCH, authority of, 74; Q. B. *Division*, *ib*. (note)

QUEEN'S EVIDENCE, 371

QUESTIONING prisoners, 14, 135

RABBITS, *see* GAME, 208, &c.; shooting at night, 212

RACECOURSES, licencing, 393

RAFFLE, *see* LOTTERIES, 302

RAILWAYS, 394; proceedings under Lands Clauses Act—compensation for lands taken, *ib*.; bye-laws—tickets—luggage—negligence, &c., 395; offences, 397

RAPE, 399; case of two soldiers, *ib*.; *see* also ASSAULT, 87, 89 (6)

RATES, 401; highway, 232; poor, 350; general district, 389; private improvement, *ib*.; for carriages and animals (military transport), fixing at Quarter Sessions, 420

RATTENING, *see* WORKMEN, 460 (4)

RECEIVERS of stolen goods, 402; summary jurisdiction, 39 (6)

RECOGNISANCES, 404; estreating, *ib*.; to try appeal, 72, 73

RECRUITS, *see* SOLDIER, 415

REFORMATORY SCHOOLS, 405

REFRESHING memory, from memoranda, &c., *see* EVIDENCE, 180

REFRESHMENT HOUSES, 273

REFUSING to adjudge, 76; to assist constable, 82; to quit licenced premises, 165; to give evidence, 179

- REGISTER, Court, 406 ; under Licensing Acts, 267 ; of 'habitual criminals,' 369
- REHEARING case, *see* PRACTICE (8), 363
- RELATIONS, maintenance by, *see* POOR, 352
- RELIEF, under poor law, 351
- REMANDING, person charged with indictable offence, 26 ; under Summary Jurisdiction Act, 36 ; distinction between remand and practice on adjournment, 363
- REMOVAL, of licences, 266 ; of poor, 357 ; of distrainable goods, 438
- RENEWAL of licences, 264
- RENT in arrear, removing goods to evade distress, 438
- REPLY, right of, 14 ; in bastardy cases, 100
- REPUTED thieves, *see* VAGRANTS, 451 (21)
- RES JUDICATA, *see* PRACTICE (14), 367
- RESCUING from custody, 82
- RESISTING constable, 133 ; *see also* VAGRANTS, 451 (22, 25)
- RESTITUTION of stolen property, 407 ; property 'in the hands of the law'—false teeth, *ib.* ; a lady's complaint, *ib.* (*note*)
- REVENUE, *see* EXCISE, 185
- REWARD, *see* COMPOUNDING, 130 ; for stolen dogs, 152
- RIDING, *see* DRIVING AND RIDING, 156
- RIGHT, claim of, as an ouster of summary jurisdiction, 367
- RIOT, 410 ; 'reading the Riot Act,' 411 ; liability of hundred, 412 ; duty of Justices in case of apprehended riot, 475
- RIVER, offences committed on, 8, 25
- ROAD, *see* analysis of note on HIGHWAYS, *supra*
- ROBBERY with violence, *see* ASSAULT 91 (16, 17) ; demanding property with menaces, 296 (29)
- ROGUE and vagabond, *see* VAGRANTS, 450 ; incorrigible, 451
- ROOKS and rookeries, 412
- ROOTS, stealing, 294 (10, 11) ; damaging, 312 (2, 3)
- RUINOUS and dangerous buildings, compulsory removal of, 388
- RULES under the Summary Jurisdiction Act, 413
- RUNNING AWAY from wife, &c., *see* VAGRANTS, 450 (15)
- SACRILEGE, *see* CHURCH, 122
- SALVATION ARMY, 476
- SANITARY regulations, *see* PUBLIC HEALTH, *supra*.
- SCHOOL BOARD, *see* EDUCATION, 166
- SCOTLAND, service and execution of process in, 430

- SEA-BIRDS, *see* BIRDS, 105
- SEA, offences committed at, or on the sea-shore, 228
- SEAMEN, deserting, 230 ; recovery of wages by, *ib.*
- SEARCH-WARRANT, 413 ; form of, Appendix XVII.
- SEARCHING prisoners, 135 ; by officer of Customs, 148
- SECOND conviction for crime, consequences of, 368
- SECURITY for payment of fine, &c., 17
- SEDUCTION, 120, and *see* CONSPIRACY, 132
- SEEDS, adulterating, &c., 414 ; selling or scattering poisoned, 345
- SELF-DEFENCE, right of, 86, 247, 324
- SENTENCES, observations on, *see* PUNISHMENT, 390
- SEPARATION, judicial, *see* HUSBAND AND WIFE, 251
- SERVANTS, *see* MASTER AND SERVANT, 315 ; characters, 316 ; embezzlement by, 171 ; stealing by, 290, 297
- SERVICE of summons, 11 ; in Scotland, 430
- SESSIONS, Petty, 4 ; Special, 5 ; Quarter and General, 47
- SETTLEMENT, *see* POOR, 354
- SETTLING or withdrawing charge, *see* COMPOUNDING, 128
- SEWERS, *see* PUBLIC HEALTH, 379
- SHEEP-STEALING, 295 (16) ; sheep worried by dogs, 153
- SHIPS AND VESSELS, burning, 86 (42) ; stealing from, 296 (33) ; damaging, 313 (19) ; offences on board, 9, 25 ; and *see* HIGH SEAS, 228 ; sending dangerous goods by, 230 ; ships under PUBLIC HEALTH ACT, 384
- SHOOTING, *see* ASSAULT, 90 (8), and GAME, 205 ; licence to kill game, 209 ; gun licence, 221
- SHOP, breaking and entering, 246 (2, 3)
- SHORE, jurisdiction between high and low water mark, 228
- SHRUBS, stealing, 294 (10, 11) ; damaging, 312 (2, 3)
- SIGNALS, showing false sea-lights, &c., 313 (20) ; tampering with railway signals, 398 (8)
- SIMPLE LARCENY, 286
- SIX-DAY LICENCES, 266
- SLAUGHTER HOUSES, 414 ; slaughtering cattle in street, 347
- SMALL PENALTIES ACT (repealed), 21
- SMALL POX, 386 ; inoculating with, *see* VACCINATION, 446
- 'SMASHING,' *see* COIN, 127
- SMOKE, as a nuisance, *see* PUBLIC HEALTH, 383
- SMUGGLING, *see* CUSTOMS, 148

- SOLDIER**, 415; Army Act, *ib.*; enlistment, *ib.*; exemption from civil process, 416; liability to maintain family, 417; deserters, *ib.*; purchasing regimental necessaries, 418; route-marching, billeting, requisition of horses, carriages, boats, &c., 419; legal proceedings, 421
- SOLICITORS**, 421; as advocates, *see* PRACTICE (4), 361; qualification of, 422; privileged communications, *ib.*; an unprivileged remark, *ib.*
- SPECIAL CONSTABLES**, 422
- SPECIAL sessions**, 5; for highways, 234
- SPIRITS**, licence to retail, 260; selling to children, 277; how far may be reduced with water, 66; 'Spirit Act, 1880,' 423; unlicenced distillation, *ib.*; conveyance of spirits without permit, 424; methylated spirit, 425; hawking spirits, 227, 425
- SPRING GUNS**, *see* MAN-TRAPS, 314
- STABBING**, *see* ASSAULT, 90 (9)
- STACKS**, firing, *see* ARSON, 85 (17)
- STAGE PLAYS**, *see* THEATRES, 439
- STAMPS** on agreements and receipts, 69; hawking, 425; using a second time, *ib.*; stamping weights and measures, 455—6
- STATING CASE** for Superior Court, 73
- STATION**, police, bailing from, 134
- STATUTORY DECLARATION**, *see* OATHS, 330
- STEALING**, generally, *see* LARCENY, 286; post-letters, 358
- STEAM ENGINES** dangerously near highway, 238; steam road locomotives, 242; a steam tricycle, *ib.*
- STILL**, keeping or using without licence, 423
- STILL-BORN child**, burying child born alive as if, 107
- STIPENDIARY MAGISTRATES**, 6
- STOLEN PROPERTY**, unexplained possession of, 292; receiving, 402; restitution of, 407; search-warrant for, 413
- STONE-THROWING**, *see* POLICE OF TOWNS, 348 (4); at trains, 393 (9)
- STOWAWAYS**, 230
- STRANGLE**, attempt to, *see* ASSAULT, 90 (10)
- STRAY ANIMALS**, *see* CATTLE-STRAYING, 112
- STREET**, defined, under Towns' Police Act, 346; under Public Health Act, 387
- STREET OFFENCES**, *see* DISORDERLY CONDUCT, 149; POLICE OF TOWNS, 346; street music, 350
- SUBPENA**, 12; service in Scotland, 430; Crown office, 27, 363
- SUICIDE**, attempted, 425

- SUMMARY JURISDICTION, Court of, defined, 57. Note of main points in dealing with offences thus triable, 426 ; Act of 1879, note on, 51. Act of 1884, note on, 56.
- SUMMONS, 10, 11, 359, 360, 429 ; discretion as to granting, 10 ; service of, 11 ; subpoena, 12 ; judgment summons, 45
- SUNDAY, 430 ; and *see* TIME, 441
- SUPERVISION, police, 368
- SURETY for payment of fine, &c., 17, 46
- SURETY of the peace, 433 ; for good behaviour, 436 ; alteration of terms, &c., after commitment, 435
- SURVEYOR of highways, 232, 235, &c.
- SUSPECTED PERSON, *see* VAGRANTS, 451 (21) ; PREVENTION OF CRIME, 368
- SWEARING, false, *see* PERJURY, 339 ; profane, 437
- SWEEP, chimney, 120
- SWINDLING, *see* FRAUDULENT DEBTORS, 94 ; FALSE PRETENCES, 193 ; GAMING, 219 ; and VAGRANTS, 450 (9, 14, 17)
- SWINE, as a nuisance, 381 ; form of complaint, Appendix XIV.
- TAXED CARTS, 437
- TELEGRAPHS, injuring, 312 (5, 16) ; forging telegraphic message, 474
- TENANT, holding over, *see* LANDLORD AND TENANT, 285 ; *see also* LODGERS' GOODS PROTECTION, 301 ; tenant stealing fixtures, 297 ; removing goods to avoid distress, 438
- THEATRES, 439 ; licences, *ib.* ; private theatricals, *ib.* ; jurisdiction of Lord Chamberlain, 440
- THREATENING LETTERS, 440 ; demanding property with threats, 296 (29) ; *see also* ACCUSING OF CRIME, 60
- THIEVES, harbouring on licenced premises, 279 ; reputed thief, *see* VAGRANTS, 451 (21) ; child keeping company with thieves, 256
- THROWING STONES, *see* POLICE OF TOWNS, 348 ; railways, 398
- TIME, computation of, 441 ; for laying information, 9, 442
- TITLE, plea of, *see* PRACTICE (13), 367
- TOBACCO, hawking, 227 ; smuggling, 148
- TOOLS, for coining, 126 ; for forgery, 203 ; hiding workman's, 460 (4)
- TOWNS' IMPROVEMENT CLAUSES ACT, 388
- TOWNS' POLICE, *see* POLICE OF TOWNS, 346
- TRACTION ENGINES, *see* HIGHWAYS, 242
- TRADE, disputes, *see* EMPLOYERS AND WORKMEN, 173 ; wages, *see* TRUCK ACT, 444 ; intimidation, 460 ; offensive trades, 384
- TRAMPS, *see* VAGRANTS, 447
- TRANSFER of licence, 265
- TRAVELLER, *bond fide*, 272 ; *malâ fide*, 279 (22) ; on railway, 394

- TREASURE TROVE**, *see* **FINDING PROPERTY**, 119
- TREES**, stealing, 294 (7), 296 (24); injuring, 311 (1), 313 (11); *see also* **HIGHWAYS**, 237
- TRESPASS**, when a criminal matter, 442; improper distinguished from unlawful purpose, 443; man under bed, *ib.*; wilful and malicious trespass, 444; right to eject trespasser by force, *ib.*; trespass in search of game, 211; by cattle *damage feasant*, 113
- TRIAL**, committal for, 24; by jury, 49
- TRICYCLE**, a steam, 242
- TRIVIAL** offences, 37; trivial libels, 300
- TRUCK ACT**, 444
- TURNPIKE ROADS**, converted into main roads, 241; 'Turnpike Act,' offences under, 156
- UNDERGROUND LODGINGS**, *see* **PUBLIC HEALTH**, 382
- UNION**, Justices *ex officio* guardians of, 350; jurisdiction in, 358; Rural Sanitary District constituted with reference to, 378
- UNLAWFUL** possession, 292; of soldier's clothes, &c., 418; unlawful purpose, trespass with, 443; unlawful assembly, *see* **RIOT**, 410
- UNWHOLESOME** meat, &c., may be condemned and destroyed, 384
- URBAN** and **RURAL** sanitary authorities, 378
- VACCINATION**, compulsory, 446; manifesto of the 'Anti-compulsory Vaccination Society,' 447
- VAGRANTS**, 447; arbitrary nature of the 'Vagrant Act,' 448; apprehension of vagrants, *ib.*; search of lodging-houses, *ib.*; three classes of vagrants, 449
- VARIANCE** between matters alleged in the information on summons and those proved at the hearing, 360
- VEGETABLES**, stealing or damaging with intent to steal, 294 (10, 11); selling unwholesome, 384
- VEXATIOUS INDICTMENT ACT**, 254
- VIEW**, conviction on, *see* **JUSTICES**, 283; view of highway previous to diversion, &c., 239
- VITRIOL-THROWING**, *see* **ASSAULT**, 90 (12)
- VIVISECTION**, 452
- VOLUNTEERS**, *see* **MURDER**, 324
- VOTERS**, parliamentary franchise, 170
- WAGERS**, *see* **GAMING**, 219
- WAGES**, not as a rule recoverable before Justices, 43; *see* **EMPLOYER AND WORKMAN**, 173; **MASTER AND SERVANT**, 315; **TRUCK ACT**, 444; seamen's wages, 230; payment of, in public houses, 461

- WAIVER of irregularity, *see* PRACTICE (3), 360; of objection to justice interested, *ib.* (11), 366
- WALL, affixing paper on, or defacing, 349
- WARRANT, in the first instance, 12, 26; on non-appearance to summons, 360, and *see* form, Appendix IV.; warrant of commitment, 17, and *see* form, Appendix XII.; issue of warrant to Scotland, 430; search-warrant, 413, and *see* form, Appendix XVII.
- WATER, compulsory supply, *see* PUBLIC HEALTH, 381; closing polluted wells, &c., 382; waterclosets must be provided in new houses, 380
- WEAPON, robbery by person armed with offensive, *see* ASSAULT, 91 (17); *see* also HOUSEBREAKING, 247 (4), and VAGRANTS, 451 (19); using in quarrel, 325
- WEIGHTS AND MEASURES, 453; standards and 'parliamentary copies,' *ib.*; local authority—inspectors, 454; stamping weights, &c., 455—6; rules and penal clauses, *ib.*; offences and penalties, 457
- WELLS, closing polluted, 382
- WHIPPING, *see* 'Birch-rod,' *supra*
- WIFE, *see* HUSBAND AND WIFE, *supra*
- WILD BIRDS, *see* BIRDS, 105
- WILFUL damage, *see* MALICIOUS INJURIES, *supra*
- WILL, or codicil, forging, 204 (6); stealing, &c., 295 (21)
- WINDMILL too near highway, 238
- WINE LICENCES, 260; wine 'off,' 262; teetotal wine, 65
- WITHDRAWING charge, *see* COMPOUNDING, &c., 128
- WITNESSES, enforcing attendance of, 12, 26; form of subpoena, Appendix VI.; witnesses in general, *see* EVIDENCE, 179; refusing to be sworn, or to answer, *ib.*; may speak with perfect freedom, 180; need not criminate themselves, 181; dying declarations, 180; examination of witnesses, *ib.*; witnesses in criminal proceedings, 181; husbands and wives, *ib.*; communications between married persons always privileged, 184; police constables as witnesses, 182; accomplices, 178; joint offenders, 182; one witness generally sufficient, 178; opinions of witnesses, *ib.*; witnesses in civil proceedings, 184; ordering witnesses out of court, 363; binding over to prosecute, or give evidence, 29; dissuading or threatening witnesses, 459; deposition of witness dangerously ill, *ib.*; expenses of witnesses, *ib.*; *see* also BASTARDY, 97; PERJURY, 339; RAPE, 400; and SOLICITORS, 422
- WOMEN, *see* ABDUCTION, 59; CHILDREN, 119 (4, 5); assaulting, 89 (2, 6); married women, *see* HUSBAND AND WIFE, 248
- WORKHOUSE, *see* POOR, 357; remand of child to, *see* INDUSTRIAL SCHOOLS, 256
- WORKMEN (Conspiracy and Protection of Property Act), 460; *see* also EMPLOYERS AND WORKMEN, 173

WORKSHOPS, *see* FACTORY ACT, 192

WOUNDING, *see* ASSAULT, 90 (8, 9)

WRECK, *see* HIGH SEAS, 231 ; liability of hundred in case of plunder, 412

WRITING, when agreement must be in, 67 ; when may be referred to by witnesses to refresh memory, 180 ; writing on walls with chalk, &c., 349

WRITTEN DOCUMENTS, rules respecting, *see* EVIDENCE, 184

YOUNG PERSONS, indictable offences of, dealt with summarily, 38 ; *see* also CHILDREN, *supra*

THE END.



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